UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

Case No. 08-13555

- -x

In the Matter of:

LEHMAN BROTHERS HOLDINGS, INC., et al.

Debtors.

- -x

United States Bankruptcy Court

One Bowling Green

New York, New York

September 19, 2008

4:36 PM

B E F O R E:

HON. JAMES M. PECK

U.S. BANKRUPTCY JUDGE

HEARING re Debtor's Motion for an Order Pursuant to Section 105 of the Bankruptcy Code Confirming Status of Citibank Clearing Advances

HEARING re Debtor's Motion to (a) Schedule a Sale Hearing; (b) Establish Sales Procedures; (c) Approve a Breakup Fee; and (d) Approve the Sale of the Purchased Assets and the Assumption and Assignment of Contracts Relating to the Purchased Assets

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P R O C E E D I N G S

THE COURT: Be seated, please. Do we really have standing room only at that spot? Okay.

MR. KRASNOW: Good afternoon, Your Honor. Richard Krasnow from Weil Gotshal & Manges on behalf of the debtors. Your Honor, I believe that there is no one in this crowded courtroom or the overflow courtrooms who has any interest with respect to the motion that is currently before the Court and that I will be addressing. Your Honor will recall that on Wednesday we sought a comfort order with respect to the functions that Morgan Guaranty -- Chase was providing as clearing agent. It provided them with comfort that the collateral that they then had would cover not only the pre-petition advances that they made as clearing agent but also those that occurred during the course of the case. What is before Your Honor this morning (sic) is essentially an identical motion but as to Citibank.

THE COURT: You've lost track of time. It's this afternoon.

MR. KRASNOW: This afternoon, Your Honor. Yes, I have. Your Honor, as I was saying, essentially the same as that particular motion. The order is essentially the same. The differences only result from the changes in facts: the numbers, the amount of collateral, the level of transactions that take place. The collateral is cash. There is no

determination being made in the order with respect to the validity of the guaranties. There is no provision in the order with respect to setoffs. Your Honor, we would rest on the motion and request that the relief be granted.

THE COURT: There are no objections that have been filed but this was an emergency motion. The courtroom is packed. This is, for all practical purposes, a clone of the very same relief that was granted the other day in favor of JPMorgan Chase. Let me just verify that there are no objections. Mr. Despins?

MR. DESPINS: Good afternoon, Your Honor. Luc Despins with Milbank Tweed with my partner Dennis Dunne and also Paul Aronson. Could we have -- not to indispose counsel but could we have until the -- just an hour while the other matter is proceeding so that we can confer with counsel just to make sure that everything is not problematic? We don't think there will be a problem, Your Honor, but we just would like a little bit of time to --

THE COURT: Well, candidly, the reason that we're doing this now is to dispose of something that was presumed to be noncontroversial.

MR. DESPINS: And I think --

THE COURT: There's nothing that you've said that tells me that it is controversial. But what I'm going to do is approve it subject to your review of the form of order to

satisfy yourself that the relief being granted to Citibank is as represented of like type to the relief that was granted to JPMorgan Chase. Is that fair?

MR. DESPINS: That's fine, Your Honor.

THE COURT: Fine. That's what we'll do.

MR. KRASNOW: Thank you, Your Honor.

THE COURT: You may approach, if that's what you're doing. I can't really tell. Frankly, with so many people in the courtroom, whenever I see the movement this way, I get a little concerned. Mr. Miller?

MR. MILLER: Good afternoon, Your Honor. It's sort of difficult to believe, Your Honor, this is the fifth day of this case. In terms of hours, I think we're in the sixth month. In any event, Your Honor, as we described last Wednesday, there are a lot of moving parts to this transaction. And they've been moving with great velocity over the last days since Wednesday. And as a consequence, Your Honor, there has had to be some major changes in the transaction. And unfortunately, they weren't finalized until about a half hour ago. What I would propose, Your Honor, is that if Your Honor will give us a recess for approximately a half hour so we can explain orally to this audience --

THE COURT: Excuse me for one moment. Excuse me.

MR. MILLER: Going back, Your Honor, a recess for a half hour so that we can orally explain to this audience the

nature of those changes and the significance. We think that will expedite the hearing. One other thing, Your Honor, if I might add, a large number of objections, Your Honor, relate to cure amounts on the assumption and assignment of the executory contracts, etcetera. The way it was set up, Your Honor, is that if you did not object to the cure amount today, you were bound by the cure amount. We're making a change in that, Your Honor. All rights to object to the cure amounts and to whatever resolution comes out of that, Your Honor, we are extending to October 3 so that there's no -- if you have a motion or an objection based on the cure amounts, you need not be concerned about it today.

THE COURT: Does that mean that if there is a cure objection that hasn't been filed prior to the commencement of today's hearing that there's effectively a broad-based extension for all such parties to file objections --

MR. MILLER: That is my impression, Your Honor.

THE COURT: -- on or before the 3rd of October?

MR. MILLER: That's my impression, Your Honor.

THE COURT: And is there any provision for a hearing in connection with disputes regarding cure amounts?

MR. MILLER: Only if the parties don't come to an agreement.

THE COURT: Fine.

MR. MILLER: Thank you, Your Honor. So I think that

if people have objections based upon that, they should be somewhat relieved.

THE COURT: All right. And I'm sure if there are questions during the break, they'll approach you or your partners.

MR. MILLER: Thank you, Your Honor.

THE COURT: I think if a half hour is what you think you need --

MR. MILLER: Yes.

THE COURT: -- why don't we say 5:15 with the understanding that time has proven to be very flexible here in the past this week. And it may turn out that we'll need a little bit more time. But let's make that the holding time and if there's a need for more, somebody should just knock on my chambers door and let me know what's required.

MR. MILLER: Thank you, Your Honor.

THE COURT: Okay. We're adjourned until 5:15 provisionally.

(Recess from 4:43 p.m. until 5:41 p.m.)

THE COURT: Please be seated. I find myself in the unusual position of being perhaps the only person in the courtroom who doesn't know what everybody else knows because I didn't hear what you told everybody. Do you want to tell me anything?

MR. MILLER: Somehow, Your Honor, we knew you were

going to ask that question. So --

THE COURT: I hate to be that predictable.

MR. MILLER: There is a document -- maybe it'd be better, Your Honor, if we do it orally.

THE COURT: Fine.

MR. MILLER: My partner, Ms. Fife, will do that. And with some assistance from Ms. --

THE COURT: Let me just check on something because -- and this is purely technical. During the first phase of the hearing, I was told that those people who are listening in spillover courtrooms had a very hard time hearing me. I'm having some difficulty as compared with our last hearing with the amplification coming out of the podium. And I just want to make sure that we're not suffering system overload. Okay. That's on. And let me also make the announcement, whenever anyone speaks for the record, this is always true here, but given the number of people, please identify yourself before speaking.

MS. FIFE: Thank you, Your Honor. Lori Fife from Weil Gotshal & Manges on behalf of the debtors. Let me try to summarize the changes that were made to the transaction. In terms of the economic changes, they result largely because of the markets, unfortunately. And from the time that the transaction was actually entered into till now, the markets dropped and the value of the securities dropped as well.

So, originally, we were selling assets that had a value of seventy -- approximately seventy billion dollars. And today, Your Honor, we're only selling assets that have a value of 47.4 billion dollars.

Barclays is assuming liabilities, however, of 45.5 billion dollars in connection with those assets. So that has not changed from the original transaction. There was an upside sharing in the original transaction. There was going to be a true-up twelve months later on and that has been eliminated from this transaction.

Barclays is still agreeing to pay the cure amounts on any leases that it assumes or that we assume and assign to it. Barclays is also agreeing to the same employee compensation arrangements. And it is also agreeing to pay the 250 million dollars of goodwill to LBI.

With respect to the real estate assets, Your Honor, that was -- we had said at the last hearing, I believe, it was approximately a billion dollars. Since that time, an appraisal has come in and it is below that amount. The contact had a provision which allowed the purchaser really to purchase the building at the appraised amount. So we have some negotiations to go, but I believe that the purchase price will come down by approximately a hundred million dollars.

There were two other real estate properties also which we received appraisals for which, similarly, were lower

than we had anticipated, unfortunately. So I think, cumulatively, we're expecting that the purchase price will come down by a hundred to maybe 200 million dollars for the real estate.

Some other changes that were made to the contracts affect what are called purchase assets and what are excluded assets. There was some confusion as to which subsidiaries, if any, were being sold. And we've clarified in a clarification letter which we're hoping to finalize and actually present to Your Honor whenever it comes down here. But in that letter, we're going to clarify that the only subsidiaries that are being purchased by Barclays are Lehman Brothers Canada Inc., Lehman Brothers Sudamerica SA and Lehman Brothers Uruguay SA. The latter two subsidiaries that I just referred to relate to a business that is called PIM, or Private Investment Management Business, which is a business that was not part of the original deal but is now being purchased by Barclays.

THE COURT: For no additional consideration?

MS. FIFE: That's correct, Your Honor.

THE COURT: And what's that business worth?

MS. FIFE: It's essentially just people, Your Honor. It's the high net worth individual brokerage business. And it's really just the people who are in those offices.

THE COURT: And their rolodexes.

MS. FIFE: And their rolodexes, exactly. The

customer accounts were being transferred anyway.

There was a change that was made to the license of the Lehman Brothers' name. It was perpetual. It is now two years but we don't really believe that that's a problem. The IMD business, which is essentially Neuberger Berman and some other related entities, will have a perpetual license to use the name.

There was a provision in the old agreement pursuant to which the parties were sharing the residential real estate mortgages. There is no longer that provision. Barclays was required to post collateral, actually this morning, in order to get DTC to open up trading. And that collateral was posted -- the residential real estate mortgages was posted to DTC. Pursuant to this transaction, Barclays is taking over and guaranteeing all of those transactions. And they are assuming the risk related to those transactions so that collateral will remain with Barclays.

THE COURT: What's the aggregate value of the posted collateral?

MS. FIFE: One second, Your Honor.

(Pause)

MS. FIFE: Your Honor, I'm not -- excuse me? There are 300,000 trades but we're not sure the value of the collateral. Perhaps during the rest of the hearing we can find that amount out for Your Honor.

THE COURT: Okay. I'm not entirely sure I'm understanding the overall impact of the change in the sharing of the residential mortgage collateral and whether or not that constitutes a benefit to the estate or a detriment to the estate. Which do you think it is?

MS. FIFE: It's hard to tell. It depends on which way those trades come out. But we believe it's a benefit to the estate because it allowed trading to continue this morning because DTC and NASDAQ were unwilling to allow Lehman to continue trading without this posting of collateral which was very important to the company, obviously. So we were able to work out this arrangement whereby Barclays would stand behind the trades. It is the debtors' belief that it's a necessary part of the transaction.

THE COURT: Okay. And I realize I'm asking a lot of questions about things that may have been fully explained when I was in chambers, but Barclays' undertaking to stand behind, as you put it, this posted collateral, how is that documented? And what happens in the event that the transaction that we're now talking about is not approved or is delayed?

MS. FIFE: It was documented in the First Amendment to the asset purchase agreement, which we actually do have and if the transaction is not consummated -- I'm actually not sure of the answer, Your Honor. I'm sorry. I believe Barclays is liable. Oh, okay. So, I'm advised by my partner that if the

transaction's not consummated then the transactions -- all the trades come back to Lehman, and Lehman is then responsible for them. Excuse me for one second, Your Honor.

(Pause)

MS. FIFE: I'm being told that if the liabilities are less than the collateral then the excess collateral comes back to Lehman.

THE COURT: And if the liabilities are greater?

MS. FIFE: We have no further obligation.

THE COURT: Okay.

MS. FIFE: We also modified the agreement -- would you like the representative from DTC to explain that in more detail, Your Honor?

THE COURT: Mr. Hirshon, I'd be happy to hear from you.

MR. HIRSHON: Good afternoon, Your Honor. Nice to be before you. Sheldon Hirshon, Proskauer Rose, representing the composite -- the trust clearing corporations. Your Honor, the essence of the transaction is to move all of the accounts seamlessly from Lehman to Barclays. What DTC does is the plumbing of that and handles all of the details in the settling of the trades.

THE COURT: Is that how they describe themselves?

MR. HIRSHON: That's how I describe them because until Sunday, I didn't understand any of this. But it is what

spigots get turned on and off and how the pipeline is filled and then emptied. So each day -- there are several different clearinghouses. And each day the trades are matches and then either a net number goes to Lehman or from Lehman to DTC or any of its clearing companies. There was a depository that holds all of the securities. The residential mortgages that you've heard about that were going to be split fifty/fifty are in the DTC registry. We hold them now. They are there. Originally, the idea for the original transaction was to split those fifty/fifty between Barclays and the estate. But in order to facilitate the settlement of these accounts, the additional fifty percent was needed so that DTC would not be at risk for the settlement. So the --

THE COURT: So this modification principally is for the benefit of your client?

MR. HIRSHON: Correct. And for the transaction, because without it trading would have stopped. There would be no business to sell because there would have been no -- no trades cleared today. So it was to facilitate the transaction as a friend to the transaction that this was done so that the business continues to operate today. Now, the arrangement is that the whole six billion dollars of residential mortgages will be there and subject to settlement. But the anticipation is that once all these claims settle, the trades that are from Wednesday through Monday settle, there will not be a need for

all of that collateral. So what the amendment to the APA says is that the fifty percent will be returned, as long as it's there. If something really terrible happens in the world and the settlements don't work and we have to use that collateral, then there will be nothing to return. But the anticipation is that if the world remains somewhat stable that the fifty percent that was now transferred to Barclays will be transferred back to Lehman. That is the expectation.

THE COURT: All right. I appreciate that explanation.

One comment before you continue, Ms. Fife. I'm just once again hearing the Geiger counter. And we are connected to two extra courtrooms and I know that there are people participating at various occasions by telephone through CourtCall. And I'm hearing increased static on the line. So, I'm just going to request everybody who is participating in this hearing, whether by telephone or in person, who has an electronic device to shut it off. And if you're on the phone, since you're just listening, please mute your phone.

MS. FIFE: Thank you, Your Honor. I'll continue going through some of the changes, if that's okay. There was a provision in a deal originally which required the debtors to transfer 700 million dollars in cash to Barclays. And that is no longer the case. There's no cash that's being transferred to Barclays.

In addition, there was a provision in the contract where Barclays was going to purchase a company called Eagle Energy Management and they are no longer going to purchase that entity.

We clarified, because a number of creditors had some concerns during the -- yesterday we had a meeting with the creditors and they were asked some questions regarding intercompany claims. We made it very clear in this clarification that we are not transferring any intercompany payables or receivables. Those remain with the particular entities.

There was a reference in the agreement to a mortgage that was on the 745 Seventh Avenue property. And as it turned out, Your Honor, there is no mortgage on that property. So we deleted that reference. There was a 500 million dollar promissory note made by 745 in favor of an affiliate which will be repaid and extinguished.

Those are the major changes to the transaction. There were some other clarifications that we made but I don't consider them material, Your Honor.

THE COURT: I still consider 500 million dollars material, though.

MS. FIFE: Yes.

THE COURT: So, the money that's due an affiliate, what affiliate is that? And as a result of the payment, how

does that impact the overall realization to the estate?

MS. FIFE: Umm --

THE COURT: Maybe it doesn't.

MS. FIFE: Yeah. I don't think it does, Your Honor. We still anticipate that the full purchase price will be paid to 745 and then transferred up to the holding company and the note will be extinguished -- I'm sorry? Yeah. It already has been extinguished.

THE COURT: Okay.

MS. FIFE: Do you have any further questions, Your Honor?

THE COURT: I may have some as we proceed. It's hard for me to tell, based upon this helpful oral presentation, how the deal has moved in terms of material changes and whether or not those changes affect, in any way, the objectors and whether or not these are changes that make the objectors happy or sad.

MS. FIFE: Right.

THE COURT: It's unclear to me at the moment because I haven't had a chance to reflect on it and I don't know what documents have been prepared that will clarify this. But I'm confident that as the evening progresses, I'll learn more.

MS. FIFE: Yes. We're hopeful that we'll have the documents so that everyone can look at them. And just one other thing I wanted to point out to Your Honor, we are keeping approximately twenty million dollars -- twenty billion dollars

of assets in LBI that are not being transferred. So those assets will have value and inure to the benefit to the SIPC estate. Okay?

THE COURT: Thank you for that.

MS. FIFE: I'm now going to turn it over to Mr. Miller.

MR. MILLER: Your Honor, I don't think it's necessary to repeat that we did make another change in connection with the time to object to cure amounts which was in --

THE COURT: I remember you said that before. One thing I do want to take care of as a piece of unfinished business from before the break. And that's the creditors' committee's position with regard to the Citibank comfort order.

MR. DESPINS: Your Honor, there was a reason why there was some -- we couldn't address it is 'cause our conflicts counsel was going to look at those issues. Susheel Kirpalani is here and he will address that, Your Honor.

MR. KIRPALANI: Good evening, Your Honor. Susheel Kirpalani of Quinn Emanuel for the creditors' committee. Your Honor, it's been represented to us that this is the same type of relief that was requested with respect to the Chase motion.

THE COURT: It was represented to me as well.

MR. KIRPALANI: Yes, Your Honor. It appears that the language is the same. The Chase motion -- or the Chase order dealt with securities and cash. And so the language is a

little bit different. It talks about how the pre-petition amounts are -- or the post-petition amounts are secured by as opposed to have an allowable setoff right. And while I agree that's not a distinction with a difference, the one thing that's not clear to me from the Chase motion is the mutuality issue. I apologize, but the timing is such that I've been getting e-mails from my office. If I could just ask the debtors, was there no mutuality issue in the Chase motion and the same issue here? Meaning that in the Chase motion, was it clear that the accounts and the obligations were both owed by the same entity and the same thing is true here? Or are we relying on a contract exception to mutuality?

MR. KRASNOW: Your Honor, both as to the JPMorgan Chase agreements, so too as with respect to the Citibank agreements, Holdings is the guarantor. And it is Holdings' collateral which was at issue in both instances. So, other than JPMorgan Chase dealing with securities and cash, although as to the Holdings company, it was just cash, as I recall, with respect to Citibank, it is just cash. So in all material respects, the orders are identical, Your Honor.

THE COURT: I'm satisfied. Are you?

MR. KIRPALANI: Yes, Your Honor.

THE COURT: Good.

MR. KRASNOW: Thank you.

MR. KIRPALANI: Thank you, Your Honor.

THE COURT: The order will be entered.

MR. KRASNOW: Your Honor, may I be excused? I think that was my only --

THE COURT: I'm sorry?

MR. KRASNOW: I think that was my only business here. Should I be excused?

THE COURT: You mean, you don't want to stay? Sure, you may be excused.

MR. KRASNOW: Thank you, Your Honor.

MR. MILLER: Good evening, Your Honor.

THE COURT: Good evening.

MR. MILLER: You know, Your Honor, as I was sitting here listening to what was going on, it occurred to me that the way we do business today is so different from the way we used to do business.

THE COURT: It could be you.

MR. MILLER: It could be me. I had trouble getting through security today.

THE COURT: Do you have anything on in your pocket?

UNIDENTIFIED SPEAKER: Are you radioactive?

MR. MILLER: I think my flak jacket, Your Honor. I think that's it. These decisions, Your Honor, are being made almost in split second timing. One has to think about the decisions that were made in connection with the bailout at Bear Stearns. How much time was devoted to that? The decision to

open access to the Primary Dealer Credit Facility at the Federal Bank to support the banking industry, to commit the federal government to what might be hundreds of billions of dollars to save Fannie Mae and Freddie Mac and to have the government advance eighty-five billion dollars to save AIG. And now, Your Honor, within the space of maybe a few days for the government to adopt a variation of the Resolution Trust Company or the Reconstruction Finance Corporation to save the economy and the welfare of the people who are dependent upon a stable economy.

The tragedy of Lehman, Your Honor, is part and parcel of the design to preserve and stabilize financial markets. Access to federal funding to maintain the business of Lehman Brothers incorporated the need to put Lehman Brothers Holdings Inc. into Chapter 11 as part of a plan to move that sensitive business of LBI to a qualified buyer as soon as possible. A buyer who meets the qualifications necessary to operate such a business -- which is a universe, I might add, Your Honor, that is only limited to a few possible candidates. In making those decisions that the government or parties involved wait for ordered reports, appraisals, physical inventories, a review of each and every document relating to the transaction, I think, Your Honor, the answer is no. They had to do what was necessary to protect the greater good and not to lose the forest for the trees.

Clearly, our economy was and is dependent upon those decisions and sole decisions which would come in the future few weeks. The decisions affected and would affect millions of people. In the case of Lehman, it affects directly the 25,000 employees whose futures became extremely clouded because of the events of last weekend.

The future of many of those people hangs in the balance in connection with the transaction before the Court. If it's not approved, no one can predict with any certainty the consequences other than to note that there will be additional turmoil and thousands of transactions will be suspended. The volatility and distress of the liquidation of collateral positions will be unmatched in history. The unemployment rolls for the metropolitan area will increase dramatically, not to mention the financial losses incurred by ordinary people who would be prejudiced by their inability to reach their accounts.

Expedition, Your Honor, is mandatory. Events move with the velocity that almost defies comprehension. In this kind of world, form cannot be exalted over substance. The substance of this transaction is to continue a business for the benefit of the general economy, the employees whose lives are at stake and to fit a small piece into the jigsaw puzzle of maintaining a stable economy. We cannot take the risk of rejecting this transaction because of ambiguities, the lack of a piece of paper to support every element of the assets to be

transferred, the lack of definition as to particular items. We have to think and we have to act in the same manner that the decisions were made by the government and others over the past week to expend billions and billions of dollars to shore up the economy. Lehman is here because it was necessary to assure LBI's access to the support of the Federal Reserve Bank and the SEC support and to allow LBI access to the window to support the transactions that were pending before there was a run on the bank. To dissipate that effort, by rejecting a transaction that is intended to save jobs, protect customers and enable a relatively smooth transition of the LBI business and bring value to all involved, would be a miscarriage of justice and detrimental to the national interest.

Since the hearing last Wednesday, and in the space of roughly twenty-four hours, Your Honor, there have been a number of significant events. Yesterday, the Chicago Mercantile Exchange unilaterally decided to close out all of Lehman's positions on that exchange. That closeout resulted in a loss to Lehman of approximately 1.6 billion dollars. Earlier this afternoon, Your Honor, the Securities Investor Protection Corporation initiated a proceeding under the Securities Investor Protection Act in the United States District Court for the Southern District of New York.

THE COURT: Excuse me, Mr. Miller. You're being interrupted, as is this entire proceeding, by someone who's on

the telephone who's whispering into the courtroom. As I said at the outset, everybody who is listening on the phone, mute your phone. Everybody who has an electronic device, find it and shut it off or throw it away.

MR. MILLER: Your Honor, as I was saying, this afternoon the Securities Investor Protection Corporation initiated a proceeding under the Securities Investor Protection Act in the United States District Court for the Southern District of New York. Mr. James Giddens, an attorney and experienced SIPC trustee, has been appointed as trustee in the SIPC proceeding. LBI consented to the commencement of the SIPC proceeding. And during the past few days, Mr. Giddens was provided with information concerning the state of affairs at LBI and the need for expedition and support of the sale transaction. Mr. Giddens is a recognized SIPC trustee and a man of great talent, Your Honor. He recognized the extraordinary nature of what is occurring and, unusual for a SIPC proceeding, SIPC and the trustee have agreed that trading in customer accounts --

THE COURT: Sorry. Technical difficulties.

MR. MILLER: In that SIPC proceeding, Your Honor, the trustee and SIPC have agreed that trading in customer accounts may continue in the ordinary course of business rather than be suspended as is usual in a SIPC proceeding. SIPC and the trustee have expended extraordinary efforts in an extraordinary

case to protect the public customers and ensure stability and preservation of customer interests. Their actions are to be commended, Your Honor. And I believe, Your Honor, that the SIPC proceeding has been referred, I hope, to Your Honor.

THE COURT: I've seen Judge Lynch's order. I have a certified copy of it and the order includes a decretal paragraph removing those proceedings to this court. I'm satisfied that the seal is in fact genuine and I'm prepared to proceed with full authority.

MR. MILLER: And, Your Honor, Mr. Giddens is here with Mr. Kevin (sic) Caputo from SIPC and the president of SIPC, Your Honor, Mr. Stephen Harbeck who's sitting in the jury box.

THE COURT: Gentlemen, welcome.

MR. GIDDENS: Thank you, Your Honor.

MR. MILLER: Barclays, Your Honor, has extended the sale to enable this extraordinary transaction and hopefully to be consummated. Yesterday, as Your Honor has heard, Barclays basically stepped into the shoes of the Federal Reserve in connection with the Primary Dealer Credit Facility as to the 45.5 billion dollars Lehman borrowed last Monday and received the collateral that Lehman had posted in connection therewith.

Because of the circumstances this week, Your Honor, the operations of LBI have resulted in approximately 300,000 sales, which is very significant. In addition, Your Honor,

because of the administration proceeding in the United Kingdom for LBIE and the freezing of all of the assets of LBI that were in the possession of LBIE, which I believe, Your Honor, stands for Lehman Brothers England, relating to repo financings, the result is that we were unable -- or LBI is unable to deliver to Barclays the assets that were originally intended under the APA. That's one of the reasons, Your Honor, for the amendments that we heard about earlier today.

There are many moving parts in what we are trying to do, many of which are beyond the control of Lehman or Barclays as market forces operate to affect the value of the transaction and the assets. Enormous problems did arise in connection with clearing transactions that have caused a number of modifications to the transaction. The necessity of assuring DTC and other clearing institutions who will not expose themselves to additional liability of some kind has been enormously time consuming.

It's because of that, Your Honor, that we have heard about these changes. But if Your Honor will look at the basic agreement, the amount of cash consideration will be relatively the same except for the issues with respect to the value of the real estate. The 250 million dollars being paid for the goodwill of LBI will go to LBI. The real estate, 745 Seventh Avenue, and the two data centers in New Jersey, that's with a variation, Your Honor, and there's some negotiation to be done

with Barclays in connection with that. And so there might be a decrease of that one billion four fifty that we talked about on Wednesday to something in the area of a billion three to a billion three fifty, in that area.

THE COURT: Let me break in with respect to that issue --

MR. MILLER: Sure.

THE COURT: -- because it's something that concerns me. I read most of the objections --

MR. MILLER: Yes, sir.

THE COURT: -- and there were a lot of them. And I may have missed some that came in late. But none of them picked up the issue that concerned me. As I view the transaction, and I need your help in telling me if I'm seeing it incorrectly, most of the value is attributed to the real estate. But there has been no traditional marketing effort for the real estate. Instead, the real estate represents a tie-in to the sale of the broker dealer assets and the preservation of markets and employment. One of the things that I think you may need to get over for purposes of today's evidentiary hearing, in terms of the showing you need to make, is that the transaction as it relates to the real estate in particular is fair value.

I know nothing about this appraisal. I don't know who commissioned it. I don't know who the appraiser is. I

don't know if he or she is in court. But I am, frankly, concerned that we're all hearing -- and maybe others heard it earlier but I'm hearing it only now -- that there is this negative variance in the assumed value of the real estate. And I find that troublesome.

MR. MILLER: Yes, sir. We will try to deal with that, Your Honor. Now, Your Honor, in connection with going forward in the transaction, I don't know what order Your Honor wants to go in, whether you want to hear oral statements of objections or should we move right to the evidentiary hearing?

THE COURT: Well, one of the things I'd like to do, and it's really to verify something, I don't recall seeing an objection from the official creditors' committee. And I don't know, as a result of that, whether the committee supports the transaction, has issues with respect to the transaction or has given you notice of whatever objections they might have. So it seems to me that because of the expedited nature of today's proceeding, we agreed Wednesday that written objections were not necessary and, particularly, not necessary in the case of the committee which had just been formed. I'd like to know what the status is as it relates to that important constituency.

MR. MILLER: Mr. Despins informed me, Your Honor, before the hearing -- I'm losing my voice -- that the committee will not object to the transaction but does not support it. So

they're not affirmatively -- I think not affirmatively going to stand up and say --

MR. DESPINS: Why don't I address that, Your Honor?

MR. MILLER: Sure.

THE COURT: I think that would be helpful.

MR. MILLER: Don't change your position.

MR. DESPINS: Good afternoon, Your Honor. Luc Despins with Milbank Tweed, proposed counsel for the committee. I'm here with my partners, Paul Aronson and Dennis Dunne. The headline is we are not objecting, Your Honor, but although we'll have some minor comments to the form of order, which we don't need to detain the court order at this point. And the reason we're not objecting is really based on the lack of a viable alternative. And, Your Honor, we're still a little bit puzzled by the statement by Mr. Miller that we're not affirmatively supporting. And that's correct. We're not affirmatively supporting the transaction, Your Honor, because there has been insufficient time for us to really do all the due diligence that we would feel should be done to take that next step of saying yes, this is the best deal and we're supportive actively. We've met with the debtor. They've been very cooperative. I don't want to imply that they have not been but we have not had time to test the assumptions and do all the due diligence we would normally do. So that is, Your Honor, the distinction.

The second message, Your Honor, which is not directed at Your Honor but really at the debtor and, generally, at also regulators, is that the committee, although we're not objecting to this transaction, we understand we're dealing with extraordinary circumstances, as Your Honor has described. The committee fully expects that after this, we're going to go back to what I would call --

THE COURT: A more conventional model?

MR. DESPINS: Yes. Business as usual for Chapter 11, if you will, Your Honor. The committee feels very strongly and wanted me to say that they recognize the extraordinary nature of what's going on here but they feel their duties are to pre-petition creditors, not to the market participants, not to the economy at large or other participants in those markets. And I think that that's very important and it's very important to the committee that I convey that message, again, not to Your Honor, but really to the debtor and other parties in this case. So that is where we stand, Your Honor.

THE COURT: I appreciate that. And it lifts the fog over at least that aspect of the case. And I'm grateful for the comment. Has there been any --

MR. MILLER: Your Honor, we --

THE COURT: Has there been any resolution by agreement of any of the other objections? Or are they all live at this point --

MR. MILLER: As far as --

THE COURT: -- except for the cure amounts perhaps?

MR. MILLER: As far as I know, Your Honor, I have to say, Your Honor, there wasn't really time. They were cascading through the electronic filing at such a rate, it was almost impossible to keep up with them.

THE COURT: I know.

MR. MILLER: And so, with people dedicated to doing the clarification of the APA -- of the asset purchase agreement, there really wasn't an adequate amount of time. As Mr. Despins says, Your Honor, this is such an exceptional circumstance, I would feel relieved to get back to the ordinary Chapter 11 process. It would be good for everybody's health. But this is just an unusual situation. And while I understand the committee's views and the parochial views as to general unsecured creditors, we are facing a bigger picture and a very difficult severe picture for everybody involved. And in addition to the people in this courtroom, Your Honor, the telephone is going -- just I can't tell you the rapidity of calls from people, where's -- how can I get my securities? This is my pension fund. And so on. This is a tragedy, Your Honor. And maybe we missed the RTC by a week. That's the real tragedy, Your Honor.

THE COURT: That occurred to me as well.

MR. MILLER: So I defer to Your Honor as to the

procedure for going forward. Should we have -- I would waive opening statements at this point, Your Honor, since I've already made mine.

THE COURT: Well, I propose the following. And I think you've made your opening statement. I would propose the following. I would like to hear -- I'm not sure what the right time for that is -- from counsel for the SIPC trustee or the SIPC trustee, beyond the fact that we've commenced a case, and understand a little bit more about how that parallel proceeding that is happening as we speak, in conjunction with the sale process, truly does tie together with what we're now doing. And I think that it would be useful for me to have an evidentiary record that supports the sale motion. Once that record is made, either through proffer or live testimony, based upon the willingness of objectors to do it through proffer -- and if they object, that's fine. We can have witnesses. I think it would be useful then to move on to the merits of the objections and deal with the legal issues that confront us.

MR. MILLER: Yes, Your Honor. Mr. Caputo from SIPC is here with us today.

THE COURT: Fine. Before he gets up, let me just confirm that what I have -- often what I say is acceptable to people when they hear it. But -- at least when I'm sitting here. But is what I have outlined consistent with your views?

MR. MILLER: Whatever you say, Your Honor, is

acceptable to me.

THE COURT: Fine. I figured you'd say that. Let's hear from the SIPC trustee.

MR. CAPUTO: Your Honor, my name is Kenneth Caputo. I am counsel for the Securities Investor Protection Corporation and I will be brief in my remarks and let counsel for the trustee step in.

We did commence a case earlier today before Judge Lynch intended to protect public customers of LBI. That has commenced the SIPA liquidation which brings into there all of a different proceeding but for the most part, it is essentially a bankruptcy proceeding, Chapters 1, 3, 5 and subchapters 1 and 2 of Chapter 7 all apply in a SIPA case specifically. The unique nature of what we have done in this case -- there are a few, but first I have to mention the collaborative nature of the proceeding that we had with all of the different regulatory agencies. We had tremendous cooperation from the SEC, from the Federal Reserve Bank of New York, from the CFTC, from private parties, if you will, JPMorgan Chase, DTC.

I'm apologizing if I leave anybody out. But we came together with a collaborative approach to deal with these exigent circumstances, these truly unique circumstances. And the other thing we've done is permitting the trustee to operate the business of the debtor under 721 of the Code for a limited period of time. That period of time to allow for transactions

to be affected expired at 6 p.m. this evening. And that was at the urging of regulatory agencies and DTC to permit many more contracts to be settled and then moved out of the entity so that these individual customers can gain access to their property in a quicker fashion.

The trustee also has the ability here to complete settlement of transactions through next Tuesday, which is a 6 p.m. date on that regard, and to take other actions as necessary to allow for the orderly transfer of customer accounts. It is SIPC's goal here to get out of the way of the normal and ordinary course of business and the fair and orderly market transactions that can be affected so that not only the institutional but the public customers of LBI have access to their account in as quick a fashion as possible. It is my understanding, based on representations from LBHI and their participants, that we're talking about more than 600,000 accounts. Many of them are institutional. I believe the number is somewhere in the range of 130,000 customer accounts non-institutional. There was some allusion today to the PIM aspect of the transaction which was affected and performs a new part of the deal. Your Honor had a question about it. We support it. It allows these customers, these high net worth customers, essentially, to be moved and Barclays is assuming those customers on the same platform at DTC, is my understanding, that existed. So this is also going to permit

the effective administration of that estate of the trustee and have less to do, essentially, Monday morning. And we stand back from the proceeding at first but we have committed all of the energy and all of the resources of SIPC to enable the SIPC trustee to get his work done, to enable Barclays to step in, take over the accounts that they are willing to take over and then to deal with the other transactions in the ordinary course of business as necessary.

THE COURT: Let me ask you a question about the timing imperative as it relates to the undertakings of your client. You mentioned a 6 p.m. cutoff date, I think, on Tuesday.

MR. CAPUTO: Yeah.

THE COURT: In order for this transaction to be optimally closed from the perspective of SIPC, when should it close? Does it need to close this weekend before the markets open on Monday?

MR. CAPUTO: The sale transaction?

THE COURT: Yes.

MR. CAPUTO: As soon as possible it needs to close. The sooner the better. That's going to provide certainty to parties and counterparties so that they can take the actions that they deem necessary to protect their clients but it also provides certainty to the hundreds of thousands of customers. And that provides comfort to the markets and I think comfort on

a national scale as Mr. Miller alluded.

THE COURT: So without putting any more words in your mouth, would it be your position on behalf of your client that, assuming the sale transaction that has been proposed to me today is approved, that the approval should happen before the close of today's hearing? In other words, we should stay here as late as we need to in order to get this done?

MR. CAPUTO: Yes, Your Honor. That would be our recommendation.

THE COURT: Fine.

MR. CAPUTO: And if I may, Your Honor, I'd defer to Mr. James Kobak, counsel for Hughes Hubbard who is counsel to the trustee, to fill you in on some of the particulars involving the actions that the trustee will take.

THE COURT: All right. Thank you.

MR. KOBAK: Good afternoon, Your Honor. Actually, Mr. Caputo has done a lot of my job for me. So I would just like to echo everything he said, especially the extraordinary cooperation of everybody involved. Mr. Giddens is here and he's prepared, and I think, in fact, he would probably like to address you and some of the other counsel if you think that's appropriate. I do have a couple of housekeeping items or maybe a little more than housekeeping. This case has now been officially assigned to you. It's on the docket and so forth. We have an administrative order which would do things like

change the caption, approve the form of notice and so forth. So we'll be filing that either over the weekend or sometime early next week and probably put it on before Your Honor, subject to Your Honor's calendar, later in the week.

We also have -- I have with me today an order because the trustee has made an investigation and is prepared to approve the transaction, thinks that the transaction is in the best interest of customers and creditors of the SIPC estate including some of the -- or all the changes that have been discussed today. It's a condition of the deal that an order be entered in the SIPC case that essentially adopts the order in the Chapter 11. And we have such an order. And, in fact, we made copies -- we haven't had time to serve it because we've only been appointed, I think, maybe for a matter of two hours. But we did make it -- maybe three hours by now, Your Honor. But we did make it available to as many people as possible here today.

And I think with that, if you would entertain hearing briefly from Mr. Giddens --

THE COURT: I'd be delighted to hear from him.

MR. KOBAK: Good. Thank you, Your Honor.

THE COURT: In fact, I invited this presentation so I'm pleased to have him come to the podium.

MR. GIDDENS: Thank you, Your Honor. SIPC and others have been working equally so for a week and I should also say

it's been extraordinary -- there's been extraordinary cooperation, 3 a.m. telephone calls, reviewing financial statements with others. The staff of Lehman has been always available. The law firm of Weil Gotshal has been extraordinarily cooperative. And I think again, the response of this extraordinary transaction by the team under Harvey Miller is truly something we're all benefiting from.

The SIPC -- looking at this proceeding, I think setting some things in context, when I looked at the balance sheet of the broker dealer a few months ago, the assets were, I think, approximately 497 billion dollars -- or the assets, excuse me, were about 500 billion dollars and the liabilities were 497 billion, which is not unusual for a brokerage firm. Nevertheless, with a pro forma balance sheet which I reviewed with members of the SEC, accountants, people from Lehman, lawyers and others, those assets had decreased because of changes in market from 500 billion to less than a hundred billion. And part of the exercise, of course, with the broker-dealer after -- the first role of a SIPC proceeding is to maintain orderly markets and to try to preserve normalcy for customer accounts. That, I think, has been done here in large measure. There are 629,000 accounts. Through extraordinary efforts a substantial number of those will be transferred. There will remain, by estimate, several thousand, which may take considerable amount of time to resolve disputes,

controversies, monies owed to Lehman and the like, which will take some time to deal with. All of those will be dealt with in the context of the SIPC liquidation.

Congress created and provided that any -- when a broker-dealer such as SIPC or Merrill Lynch was in financial difficulty it had to be liquidated, it could not be reorganized. And it had to be done so under the specific provisions of the Securities Investor Protection Act, which, in effect, can create certain priorities and preferences for customers. And so that's the first job of a trustee. I think that we have focused on that and spent considerable resources in trying to accomplish that.

Nevertheless, as the Federal Reserve, the SEC and other regulators involved in this, there will be considerable assets. Of course, in this proceeding, 500 million, three billion are really deemed to be de minimis numbers. But there are complicated transactions which are in securities and derivatives, private equity investments, all of which will have to be analyzed and resolved in the course of our marshalling the assets of the broker-dealer. The broker-dealer is out of business. They could not conduct additional business after 6 p.m. Most of the personnel and typical brokerage assets have been transferred to Barclays or will go to other places. Nevertheless, we will be left with substantial -- there are subsidiaries which have to be, again, mostly dealing with

securities and derivatives and the like, whose assets and issues will have to be sorted.

It's, I think, the intent of the statute that those kinds of things are dealt with in this proceeding, and we would, of course, intend to work closely with DTC, with regulators, of the SEC in particular, the Federal Reserve, foreign regulators dealing with resolutions to these kinds of issues.

So we have many challenges and much work ahead of us. There's no indication we'll have a small amount of money, cash. The liabilities, as best I can determine them, are in the billions. And there are potential assets which are also valued highly on the balance sheet. As to what those assets will be, many of which appear to be -- have decreased, because of market conditions, substantially in value just in a matter of days, I really cannot tell.

As I say, we intend to work cooperatively with everyone, try to work quickly and efficiently. Again, we have all the kinds of issues you would have if you -- the residue of any major financial institution. And, again, it's challenging because Lehman was certainly one of the most complex, versatile and finest of the financial institutions globally. And I must say that all early indications are -- the good thing is, unlike other liquidations we've been involved in, there's no indication of sloppy record keeping, missing customer funds and

the like. Now, that is not to say, as Mr. Miller indicated, there have already been 300,000 failed transactions just in a matter of days. So it's a complex undertaking that, as I say, we have been working around the clock and will continue to do so to try to resolve those issues, taking care of customers, which is a priority, promoting the orderly transfer of accounts, but also trying to fairly resolve many, many open issues relating to complex securities transactions.

So, thank you.

THE COURT: Thank you. Mr. Miller?

MR. MILLER: Your Honor, I think there may be some other regulators that want to --

THE COURT: I didn't realize there were others who wanted to speak in connection with the SIPC proceeding.

MR. HIRSHON: Yes, Your Honor. Sheldon Hirshon, Proskauer Rose, representing Depository Trust & Clearing Corporation.

I too rise to urge the Court to act on this matter as quickly as possible. And I wanted to explain a little bit more about the plumbing, if you will.

The Depository Trust & Clearing Corporation is actually the holding company for three separate clearing corporations, DTC, NSCC, and FICC. And the reason that they're somewhat different is because they clear different kinds of securities.

You heard that there are roughly 600,000 institution clients and 170,000 retail clients of Lehman. Lehman has an account at DTC and I'll use that globally to refer to each of these clearing corporations. And many, if not all, of the transactions that those customers process come through the DTC. So all of those people are trading through a Lehman account at DTC. DTC, itself, is a securities agency; it's registered under 17A of the 1934 Act. It is supervised by both, the Federal Reserve and the SEC.

We have participated along with the other regulatory agencies to facilitate this transaction. The magnitude of the transaction as you've now heard, the number of trades that come through, the 300,000 failed trades, meaning that there hasn't been a delivery either on one side that is a sale or buy. All of those have to be worked out and we need to really focus on that and hopefully understand what that is and maybe even clear most, if not all of them, by Monday when the market reopens. And we hope to have transferred the accounts from Lehman to Barclays so that it would be seamless. So that when the customer calls up on Monday to place an order it will be prosecuted and then cleared.

So that's why we've risen to urge the Court to consider this. It is an extraordinary moment. And in order to keep the market stabilized and have an opening on Monday where Barclays can trade as if it were Lehman, we need to have this

transaction approved today and as early in the evening as possible so then we can go back to our offices and do the work we need to do, sign the various documents to transfer, and get all the regulatory approvals that are required.

Thank you, Your Honor.

THE COURT: Thank you.

MR. MILLER: Your Honor, taking Mr. Hirshon's cue from what he just said, I would propose, Your Honor, as direct testimony, that we would offer a proffer at this time.

THE COURT: That's fine. But Mr. Bienenstock is raising his hand, however, and may have an issue.

MR. BIENENSTOCK: Your Honor, as I think Your Honor anticipated, the issues here are mostly legal rights with the relief they're going to be requesting. I've asked three times for the proposed order, which at the recess they said has changed. It's in the courtroom, I'm told.

Before I agree to a proffer, as opposed to the witnesses, I'd like to see -- and for due process, I'd like to see the relief being requested in writing, that's what this hearing is all about at this point, I think.

THE COURT: All right. Well, let's deal with that. And maybe in light of the fact that you're actively participating at this moment, and given the awkwardness of the distance from the bench and microphones, we can have Mr. Bienenstock walk through the gauntlet and come to the front of

the courtroom.

Apparently, there will be others joining him and --

MR. GOLDEN: Your Honor, I just want to make sure -- we don't have an objection --

THE COURT: You have to identify yourself by name, even though I know you.

MR. GOLDEN: Daniel Golden Akin Gump Strauss Hauer & Feld, counsel for an ad hoc bondholders group.

We have no objection to proceeding by proffer as long as the proffered witness will be available for cross-examination.

THE COURT: That's fine.

MR. MILLER: I was only offering direct testimony, Your Honor, as a proffer.

THE COURT: Mr. Bienenstock, do you wish to comment -- I view what you said as an objection to proceeding by means of proffer until such time as there is a writing that clarifies the relief being sought in the pending motion at this moment. Do I understand your position correctly?

MR. BIENENSTOCK: Yes, Your Honor, with one step further. I really think, based on all of the circumstances, it's enough that everyone showed up at 4 p.m. without knowing what deal was being proposed. Not pointing fingers, again, Your Honor, but these are just how the facts unfolded.

We not only knew -- didn't know the deal being

proposed, we didn't know and do not know at this instant the relief being requested, and yet this hearing is going forward. It's really -- I don't think I've ever had occasion in my career to make such a due process argument, but the facts compel it. I'd like to see the relief being requested before this proceeds. Whether by proffer or by live witness. And I think everybody, including the Court, should know what's the relief being requested.

THE COURT: Well, I'll let Mr. Miller respond to that, but I'm going to give you a reaction to what you just said, too.

I've attempted to distill and digest from my own understanding the various objections that have been filed, including the objection that you filed. And many of the objections, but not all of them, raise questions as to vagueness in the asset purchase agreement, ambiguous provisions in the asset purchase agreement, concerns with respect to the sale of nondebtor assets, and confusion associated with the speed with which the transaction is proceeding that makes it more difficult for parties-in-interest to comprehend precisely how they're affected by the transaction. In fact, you said much the same thing differently on Wednesday on behalf of your clients.

But I also understand that since Wednesday, in a process of a cooperative information sharing, as opposed to

coercive discovery, there have been many opportunities offered to parties such as your client and you. I have no idea what happened and I don't need to know that right now. But my working premise is that in a manner somewhat comparable to the level of cooperation described by the SIPC trustee that has existed between the regulators and the SIPC trustee and Mr. Miller's firm in making this dramatically emergent transaction happen, that through discovery -- informal discovery, parties-in-interest, including the creditors' committee, has gotten to the point of at least acquiescing because the transaction is so significant to the markets, to the employees, to the U.S. economy, to the world economy.

I think I know what's going on here, and I'm not saying that you necessarily know how your client's rights are affected. But I have a pretty good idea, even with the modifications that I've only heard about as recently as when I took the bench an hour or two ago, I can't remember what time it was. I understand this deal, not in every aspect but certainly in broad outline. I have notice. This is a hearing. I believe that for due process purposes we are all here with, perhaps cobbled together notice, but it's notice. The form of order undoubtedly is something that parties will be arguing about. But I believe that it is not a necessary precondition to proceeding with the hearing that parties know more in terms of what's before me. Because unless you have

another argument to make, I'm satisfied that I know the relief that's being sought.

In conjunction with the SIPC proceeding, substantially all of the going concern value that exists within these assets is to be preserved. Assets, principally the real estate, will be sold for a value that I've already questioned. The essential terms of the transaction, with modifications, have been understood at least for the last few days.

What I think you're addressing, and I don't want to speak for you, is that there are particulars of the transaction as it affects your client that you're still uncertain about. I believe that we should proceed with proof. Everybody's rights are reserved. If there's a need for a witness to testify live on cross-examination after a proffer, the witness is available and will be exposed to cross-examination. If there's an objection to proceeding by means of proffer, this is the time to make that objection. So question one is do we or don't we at least offer the direct by means of a proffer?

MR. BIENENSTOCK: If you're asking for my response first, it's --

THE COURT: It might as well be because you're right there.

MR. BIENENSTOCK: If the debtor will demonstrate its cooperation and give us the proposed order so we can read it, I would have no objection proceeding by proffer. Otherwise, I do

object.

MR. MILLER: Here's the order.

MR. BIENENSTOCK: Thank you.

THE COURT: Okay.

MR. BIENENSTOCK: I have no objection to proceeding by proffer.

THE COURT: All right. That must be the most difficult request for a form of order I have ever seen. Mr. Sabin?

MR. SABIN: Good afternoon, Your Honor. Jeffrey Sabin from Bingham McCutchen on behalf of Harbinger Capital Special Situations and Harbinger Capital Partners Master Fund.

I rise not to object to the proposed proffer. And we did file a limited objection. And based upon what we have heard before you took the bench in the interim, and based upon what you heard from Ms. Fife when we presumed this hearing, we have two other clarifications that perhaps could be part of the proffer that I think we heard. And assuming that these two representations are indeed part of the proffer and the process is otherwise as you described with respective parties-in-interest participating in getting to a fully consensual order, our objection would be resolved.

So let me first talk about those two additional things that I understood are material, enough at least to my client, to put it on the record at this point. First, that no

assets of any of the nondebtors, whether in this Chapter 11 cases or in the SIPC proceeding are being sold as part of this transaction. And we would seek that representation, not only from the debtors, but from the purchaser and from the SIPC trustee.

THE COURT: I hate to break in on that. But if I heard what Ms. Fife had to say, there are some nondebtor assets that I believe are being sold. Lehman Canada, Lehman Sudamerica and Lehman Uruguay S.A.

MR. SABIN: I believe, Your Honor, that would be an asset of LBHI, the parent. And the asset being sold is stock so that you would have jurisdiction. Just to clarify for the record.

MR. DESPINS: Your Honor, I apologize, but I believe their real estate is owned by -- is it all owned by the debtors? The New Jersey real estate as well?

UNIDENTIFIED FEMALE SPEAKER: Yes.

MR. DESPINS: I apologize, Your Honor. It's a limited liability company which the debtor owes ninety-nine percent.

THE COURT: Mr. Sabin, before you proceed with your remarks, just because I think for good order you should have the full attention of the bench and the full attention of those who are in the room, pause for a minute, because there's some movement that I'm finding distracting. Mostly having to do

with the passing out of the form of order so that Mr. Bienenstock's ability to review it is not an exclusive privilege.

Why don't you proceed?

MR. SABIN: Thank you, Your Honor. So to be precise, after the various comments I'll go back to what I believe to be the understanding of an additional material term, if you will, that will be set forth in a so-called six-page clarification letter that will constitute an amendment to the as-filed version of the APA. And that is a representation, or as part of the proffer, which is supported also not only by the debtors but by the purchaser and by the SIPC trustee, that no assets of any nondebtors, whether in the Chapter 11 cases or in the SIPC proceeding are being sold as part of this transaction.

And for clarity, I understand from the remarks of Ms. Fife, that there are certain equity interests that constitute property of the estate of one or more of these debtors that will now be part of this transaction.

MS. FIFE: Your Honor, if I may?

THE COURT: Sure.

MS. FIFE: During the break that issue came up. And I responded that there were no nondebtor assets being sold. However, I was incorrect in one very small way. There is some intellectual property that is held by nondebtors that is primarily used and necessary for the LBI business, and that is

being sold pursuant to this transaction. Other than that, no other nondebtor assets are being sold.

THE COURT: Is this intellectual property held in a special purpose entity?

MS. FIFE: We're not exactly sure what entity it's held in. I wouldn’t say, though, it's a special purpose. It's perhaps spread out through other subsidiaries.

THE COURT: Okay. It sounds like there's some nondebtor property, but it's IPR.

MR. SABIN: I'm just going to reserve for that part of our objection related to this issue. But it doesn't sound like it's a material asset that is part of the transaction itself.

Number two, in that same session where Your Honor was not in participation, we understand that so-called master netting agreements and securities contracts, other than those already owned as of today by Barclays, will not be part of the sale by LBI in this transaction.

THE COURT: In making that statement, are you seeking a clarification that what you had just said is true?

MR. SABIN: I am, Your Honor.

THE COURT: Who's going to confirm that, if it's, in fact, true?

Maybe that will have to be confirmed at some other time.

For record purposes, it's unclear what just happened.

MR. SABIN: I think, let the record reflect that the parties with knowledge will confer and hopefully we will resolve it and get an answer on the record.

THE COURT: Fine.

MR. SABIN: The additional matters, Your Honor, that we have a concern with, which of course, were not facts known when we filed our objection, deal with the intent and maybe it's already an act of the SIPC trustee. With respect to the existing five corporate entities that are subsidiaries, as we understand it, of LBI, which is now subject to the SIPC proceeding. And whether or not any or all of those entities will indeed become, or have become, as we sit here, debtors, whether in Chapter 11 or Chapter 7, especially given our understanding that the proceeds going to LBI are just 250 million dollars. And given our understanding that many of the employees who may have otherwise supported the services of some or all of those entities will no longer be supporting those entities.

Other than that, Your Honor, no longer delay. And I will turn the podium to Mr. Miller to go forward with the proffer.

THE COURT: I don't think you received a clarification on that last point. Is that something that can be clarified now or should it be clarified later?

My suggestion is for good order that we, at some point, have a break. You and others will have an opportunity to meet and confer and gain some additional information. And that we proceed by way of proffer unless there's someone else who has something to say on that subject.

MR. SABIN: Thank you, Your Honor.

THE COURT: Thank you.

MR. MILLER: Harvey Miller, Your Honor, for the debtors, again.

If Your Honor please, I would offer proffer, the testimony of Herbert H. McDade. If Mr. McDade, Your Honor, were called to the stand to testify, he would testify to the following effect:

Mr. McDade received a Bachelor of Arts degree from Duke University and a Masters of Business Administration from the University of Michigan.

After joining Lehman Holdings in 1983, Mr. McDade was named head of Corporate Bond Department in 1991. In 1998 he was named global head of Debt Capital Markets. In 2002 Mr. McDade was named to Lehman Holdings Operating Committee. He has served as global head of the Fixed Income Division for the period June 2002 through 2005. In June of 2005 Mr. McDade assumed the responsibilities of the global head of Equities Division. Mr. McDade has over twenty-five years of experience in managing a company's financial operations.

Mr. McDade would testify that Lehman Holdings' predecessor was founded in 1850. Since that time Lehman Holdings grew into the fourth largest investment bank in the world. He would testify that through Lehman Holdings' subsidiaries, it is a global market maker in all major equity and fixed income products. Lehman Holdings' subsidiaries are members of all principal securities and commodities exchanges in the United States, including FINRA and the NYSE. And memberships on several principal international securities and commodities exchanges, including London, Tokyo, Hong Kong, Frankfurt, Paris, Milan, Singapore and Australia.

Lehman is a global leader -- was a global leader in equity and fixed income sales, trading and research, investment banking, private investment management, asset management and private equity.

Mr. McDade would testify that the tightening of the U.S. and international markets caused Lehman Brothers to experience a severe liquidity crisis.

Now Lehman Holdings' broker-dealer subsidiary, Lehman Brothers Inc., relies to a large extent upon funding from Lehman Holdings, which is the public company and the issuer of debt -- unsecured debt that provides funds for the entire organization. And that such funding is no longer available to provide to Lehman and LBI.

And as each hour has passed and uncertainty is

prolonged, investor's faith in the market has weakened the value of Lehman's business and it has rapidly deteriorated.

The state of affairs at Lehman Brothers Holding Inc. and LBI is critical and their fate just jeopardizes their affiliates' ability to conduct business.

Absent approval of the Barclays' transaction, the broker-dealer business would discontinue as a going concern and adversely impact the credit markets on a global scale in ways that are immeasurable.

He would testify that Lehman Brothers and its advisors have literally spent every hour attempting to preserve Lehman Holdings' estate and LBI's broker-dealer business.

Other than the liquidity crisis, Lehman has been facing pressure and constraints from regulators and agencies. The Federal Reserve, the SEC, the CFTC and other governmental entities have been putting constant pressure on Lehman to engage a prospective buyer and consummate a sale of the broker-dealer business, no later than today, so that there is a seamless transition to preserve the business.

Other than the pressures from regulators, Mr. McDade would testify that the broker-dealer's customers are in a state of panic. Vendors are threatening to stop providing services. Lehman is experiencing severe internal pressures. He would testify that it would be an understatement to state that the morale of the employees is low. Employees have and will

continue to defect. And the images on television of employees streaming out of the Seventh Avenue headquarters with boxes and suitcases with their possessions is self-evident proof of what is happening.

He would testify that the broker-dealer business services over 600,000 customer accounts, and that it could take several months to transfer all of the accounts in the ordinary course of business. In its current state the broker-dealer does not have sufficient capital to service its customer accounts while transferring them to another broker-dealer in the ordinary course of business. The market value of customer accounts is in the hundreds of billions.

Mr. McDade would testify that the broker-dealer is dependent upon financing from Lehman Holdings Inc., the holding company during the period prior to the Chapter 11 case. Without access to financing, the broker-dealer is incapable of servicing its customer accounts. As a result, the broker-dealer would have no choice but to close its customer accounts and that would result in billions of dollars of losses and damages.

If the broker-dealer is not able to settle trades, a SIPC trustee will commence a proceeding and there has been a proceeding commenced consistent with the transaction that is being proposed.

Mr. McDade would testify that during the past ten

days, he and Lehman's senior management, have been in constant communications with Lehman's regulators. The regulators are, for now, very supportive of the current transaction. In an effort to facilitate the transaction, the SIPC trustee agreed not to freeze customer accounts when the broker-dealer was placed into a SIPC proceeding.

The regulators and agencies support the Barclays' transaction. But they have made clear to Lehman that their patience is limited and they are placing tremendous pressure on all parties to close a transaction no later than today. The state of Lehman's affairs have been widely publicized the world over.

It has been widely reported in the media that Lehman, its senior management and advisors have participated in numerous meetings conducted by the Federal Reserve Bank. At these meetings, the Federal Reserve Bank and Lehman met with numerous financial institutions to attempt to find the solution to the problem of Lehman's financial condition.

Also, as widely reported in the media, the financial institutions that participated in those meetings included some of the largest banks in the country.

Notwithstanding the help from regulators and other governmental agencies, Lehman was not successful in reaching an agreement with any of these parties as to a support for continued operations.

Mr. McDade would testify that he first became involved with this particular transaction Monday morning -- last Monday morning, I guess that was September 15, at 7 a.m. in the morning. Since that time, he has been in constant contact with senior management and Lehman's outside advisors regarding the status and progression of the negotiations. The negotiations leading up to the Barclays' transaction have been at arm's length, objective, aggressively pursued by Barclays and difficult, to say the least, Your Honor.

He would testify that since the collapse of Bear Stearns and a subsequent takeover by JPMorgan, the Federal Reserve Bank has made financing available to broker-dealers in what is colloquially referred to as the window.

After the broker-dealer settles its trade at the close of business, the clearing bank returns the collateral, which Lehman then transfers to the Federal Reserve in exchange for financing until the opening of business the next day. That process, as the liquidity of Lehman's deteriorated, no longer became possible.

He would testify that in the climate of today's market, a potential buyer of the broker-dealer business could not operate without having access to the PDCF, the Primary Dealer Credit Facility. That facility is not available to all broker-dealers. Rather, it is available only to a limited number of financial institutions who could meet the rules and

regulations of the Federal Reserve in respect thereof. And that, Your Honor, is probably less than a dozen institutions.

He would testify that during the period of stress and strain, the week before this week, Lehman attempted to interest the Bank of America in an acquisition of Lehman's, and that, unfortunately, did not come to fruition. At the same time, it was negotiating an acquisition by Barclays of the Lehman business. And that negotiation led to what I might call an agreement that was subject to the -- he would testify it was subject to the regulators throughout the world, and, unfortunately, it became clear that that agreement could not be consummated.

And immediately after that announcement was made, he would testify that he and other officers of Lehman were called to the Federal Reserve Bank in New York to meet with the Federal Reserve Bank representatives, the SEC, and the United States Treasury to deal with the problem confronting Lehmans. And those meetings, he would testify, took place, Your Honor, Sunday morning and ran into the late evening of that day. In which it was made perfectly clear that it was necessary for the protection of the public and the financial markets in an effort to placate the public markets, or at least stabilize the situation, that it is in the best interest of all parties that Lehman Brothers Holdings Inc. commence a Chapter 11 proceeding. And that it maintain, for LBI, access to the so-called window.

And it was in that context, he would testify, that LBI was enabled to go forward, at least for the past week.

He would also testify, Your Honor, Barclays, unlike some of the larger and healthier financial institutions that might qualify for access to the PDCF, does not have a North American broker-dealer operation of this scale. Therefore, the sale is a national extension of Barclays' business. Barclays would have access to the PDCF and also will assume Lehman's broad spectrum broker-dealer license.

Not only is this sale a good match economically but it saves the jobs of thousands of employees and avoids losses that could total in the hundreds of billions of dollars.

He would further testify, Your Honor, that he is familiar with the asset purchase agreement, that he participated in all of the negotiations involved in the asset purchase agreement. And that those negotiations from time to time broke out into different teams, but he was the team leader for Lehman.

He would testify that the asset purchase agreement provides for the sale of the North American broker-dealer business of LBI, which includes banking and capital markets business in addition to numerous other divisions.

The Seventh Avenue headquarters is being transferred to Barclays, in addition to the various offices located throughout the United States, that are integral to the broker-

dealer business. The value of the real estate being transferred to Barclays pursuant to the transaction is subject to negotiation with respect of the appraised values. That the building on Seventh Avenue is subject to an appraisal which has been provided to Barclays. And that appraisal is in the area of 900 million dollars to 100 million dollars. And that the appraisal was done by CB Richard Ellis. And it was prepared for the other debtor in this case, LB 745 LLC and Barclays Capital Inc. And it is a voluminous appraisal of the properties which we will offer into evidence at the appropriate time, Your Honor.

And that he would also testify that an appraisal of the two data centers was also directed and that CB Richard Ellis was also engaged to undertake that appraisal. And that appraisal has established the value for the purpose of the negotiations, Your Honor. And as pointed out earlier in the proceeding, those values have come in at slightly less -- I shouldn't say slightly, less than was originally projected.

So that was a very negotiated term, and the reason for the transfer of these properties, Your Honor, is that they are integral to the smooth transition of the businesses.

Barclays will also assume exposure for the employees that accept offers of employment, which is estimated to have a value of approximately -- an exposure of approximately two billion dollars.

Barclays is also assuming the cure amounts relating to contracts and leases that will be assumed pursuant to the asset purchase agreement. And that has a potential exposure, Your Honor, of 1.5 billion dollars that he would testify to.

Barclays is also paying the real estate transfer taxes, which are estimated to be approximately thirty million dollars.

Mr. McDade would testify that the financial community has known that Lehman has been under stress for some time. Certainly, going back to the time that Bear Sterns was bailed out. Potential purchasers have known that Lehman has been searching for a buyer since well before the Chapter 11 case commenced. And that those ethics, those strategic alternatives that were being pursued involved parts of Lehman as well as the whole of Lehman. And that the notoriety attached to that did not produce any interested parties other than the ones I mentioned -- he mentioned.

During the meeting at the Federal Reserve Bank last week, Bank of America, JPMorgan, Merrill Lynch and Barclays were all present, showing interest in the broker-dealer assets. It was clear to each party that if Lehman was unable to reach a deal it would most likely have to commence cases under Chapter 11 of the Bankruptcy Code. That would not only have an adverse impact upon their businesses but also upon the international markets.

He would testify that since the commencement of the Chapter 11 case, Lehman's senior management and its advisors have not undertaken an intensive marketing of the business and the assets to be sold. But instead focused on reaching an agreement with the most eligible interested buyer for these assets.

That notwithstanding the lack of a specific program for marketing, the sale of Lehman's broker-dealer business has been known worldwide. And, yet, he would say nobody has expressed an interest to step into the shoes of -- excuse me, step into the shoes of Barclays, Your Honor.

Lehman has not received any other interest since the commencement of the Chapter 11 cases. If Lehman was approached by another potential buyer that he would consider the offer, provided that the company had sufficient liquidity to operate the business without jeopardizing customer accounts. That has not happened, Your Honor. So it is almost academic.

Mr. McDade would testify, Your Honor, that if the sale with Barclays is consummated, customer accounts would continue on a seamless, uninterrupted basis and trading would continue on a normal basis, thereby maintaining the billions of dollars in value.

At the same time, the jobs of thousands of employees would be saved and will be entitled to substantial benefits from Barclays in the form of compensation, bonuses and

severance payments that are based upon the employee's prior performance while with Lehman.

He would testify to the consummation of the transactions makes available a greater pool of assets to the debtors' estates, because the exposure under Lehman Holdings guarantee to the broker-dealer will be substantially less. If the transaction does not close today or over this weekend, Your Honor, Mr. McDade would testify that the effect on the broker-dealers business and on Lehman Holdings would be devastating. First, the failure to consummate the transaction would cause default under the DIP facility and require Lehman Holdings to repay the outstanding amounts under that facility.

He would testify that the liabilities in the hundreds of billions of dollars would be triggered against Lehman Holdings which would in turn deplete the property available to distribution to creditors. It would adversely affect the debtors other nondebtor subsidiaries to the extent they have any value.

He would testify, Your Honor, that if the transaction is not consummated, it will result in the largest failure of a broker-dealer in the history of the United States and will cripple the credit markets for some time to come.

He would further testify, Your Honor, that the shock of this transaction not being consummated in the public markets could be immeasurable and could ignite a panic in the financial

condition that we now face in the United States.

He would testify that it is essential to an orderly financial market that this transaction be consummated as early as possible in the interest of all stakeholders of these two cases. And in the interest of the public in general and the economy in general, and to avoid a dislocation in the market, Your Honor.

Thank you, Your Honor.

THE COURT: And that concludes the proffer?

MR. MILLER: Yes, Your Honor.

THE COURT: Is there anyone who wishes to cross-examine Mr. McDade with respect to the proffer or may I simply accept the proffer in the form it has been offered by Mr. Miller without further examination?

MR. QURESHI: Your Honor, Abid Qureshi, Akin, Gump, Strauss, Hauer & Feld on behalf of an ad hoc group of noteholders of LBHI. We would like to cross-examine the witness.

THE COURT: All right. Mr. McDade should come to the stand then.

(Witness is sworn)

CROSS-EXAMINATION

BY MR. QURESHI:

Q. Good evening, Mr. McDade. You testified through the proffer that you were involved in the negotiations concerning

the asset purchase agreement, correct?
A. That's correct.
Q. And, sir, did you also attend a meeting that was held with creditors this past Wednesday at Weil Gotshal?
A. Yes, I did.
Q. I'd like to talk first, if we could, about the real estate assets. What was the expectation of the debtors with respect to the headquarter's building at 745 Seventh Avenue at the time the original asset purchase agreement was signed up with Barclays in terms of the value of that building?
A. The headquarters building, approximately a billion dollars.
Q. So that was the expectation at the time that you first entered into the asset purchase agreement with Barclays?
A. That's correct.
Q. And at that time, sir, what was the debtors' expectation concerning the value of the two other real estate assets located in New Jersey?
A. The two data centers totaled 450 million.
Q. And is it your testimony today, sir, that the appraisal with respect to the headquarters building performed by CBRE appraised the value at 900 million, is that correct?
A. I don't know.
Q. You don't know what the appraised value is? Do you know -- were you involved with discussions with Barclays

concerning the appraised value of the headquarters building?
A. I was involved with the negotiations in terms of the process with respect to the purchase of the building and the process with respect to getting the appraised value. I have not been involved since, directly. The team has.
Q. Do you know if the appraised value, whatever it is, of the headquarters building, is something that has been agreed upon between Lehman and Barclays?
A. The appraised value of the building is still to be negotiated, as Mr. Miller suggested earlier.
Q. So you do not know what CBRE concluded the appraised value was in their review of the headquarters building?
A. The team has been involved in that, I have not been directly involved.
Q. Okay. Sir, with respect to the two buildings located in New Jersey, are you aware of what the appraised value is of those buildings?
A. I would answer in the same way, the team has been involved.
Q. You personally have not?
A. Correct.
Q. And, again, Lehman's expectation going in was that the approximate value of those two building was 450 million?
A. That's correct.
Q. And is it your understanding that it's materially less

than that today?
A. Materially less -- again, I have not seen the final documents in terms of the appraisal.
Q. Okay. With respect to the appraisals of those two buildings in New Jersey, again, has that appraised value, although it's an unknown to you, do you know whether that appraised value has been agreed upon between Barclays and --
A. No, it has not, to be negotiated.
Q. Okay. Is it your understanding, sir, that with respect to the transfer of these real estate assets to Barclays that there is any broker fee involved?
A. My understanding is from the negotiation, again, that a suggested broker fee was part of the negotiation to take place, yes.
Q. And do you know what the magnitude of that suggested broker fee is?
A. I do not.
Q. Okay. Do you have any approximate idea of what it might be? Are we talking tens of millions, fifty million or do we not know?
A. I do not know.
Q. Okay. Is it your understanding, sir, that there actually will be a broker fee payable to a broker as a result of the transfer of these assets?
A. There is not an individual broker involved.

Q. So there is no actual broker fee that will be paid, but value will be deducted from the appraised value for the benefit of Barclays, is that correct?
A. That's correct.
Q. Sir, just to switch gears and to talk about the businesses that are being sold from LBI to Barclays, are there any businesses remaining at LBI that are not being transferred to Barclays?
A. No.
Q. And with respect to the contracts that are associated with each of the various businesses that are being acquired by Barclays, do each of those contracts also reside at LBI?
A. The contracts with respect to the underlying products?
Q. Let's start more broadly, the contracts with respect to the running of each of those businesses, generally?
A. I'm not quite certain I understand the specifics of the question. The assets of those business units, the people of the business units will be moving to Barclays. The individual businesses have different assets and securities and derivatives, obviously, that they're responsible for trading. The contracts, themselves, in terms of the business units, I'm not certain I understand the question.
Q. Okay. Are the trading contracts with respect to the various products that each of those businesses operates in, are those contracts going to the purchaser?

A. The specific question has yet to be determined, given the dynamic nature and speed of which we're operating. Each of the individual businesses will enter into a series of very quick next steps to determine how we actually transact in each of those business units going forward.

Q. And who will determine which of those contracts go to the purchaser and which of those contracts stay behind? Will that be something in Barclays' discretion, or is that Lehman's decision?

A. That will be a mutual process.

Q. And is it your understanding, sir, that all of the contracts that are to be negotiated, in terms of whether they stay or whether they go, are contracts that reside at LBI? Or are any of those contracts that reside at other Lehman entities?

A. LBI.

Q. And, sir, can you also please confirm if it is your understanding that the purchased assets do not include Neuberger Berman or any of its assets?

A. Yes, I affirm that.

Q. Okay. Sir, are you aware of whether -- do you know what a closing balance sheet is?

A. Yes, I do.

Q. Okay. And do you know whether a closing balance sheet was prepared in connection with this transaction?

A. I am not aware of that.
Q. Okay. Assuming that one was not, do you have any understanding of why one was not?
A. The speed of which we're operating.
Q. Well, in the absence of a closing balance sheet having been prepared, can you please describe for the Court how it is that the debtor determined that fair value was being realized for the sale of these assets?
A. For the assets?
Q. Yes.
A. The individual assets on the balance sheet, the trading inventory was bottoms up, meaning individual line item detail processed through all of our individual risk business units in coordination with the normal finance professionals who are incorporated into the valuation process.
Q. Did the debtors have any form of valuations of any of the assets that are being transferred?
A. Sorry?
Q. Does Lehman have any valuations -- internal valuations of any of the assets that are being transferred to Barclays?
A. Absolutely. There are many complex securities involved. Many different models that we use to evaluate those securities.
Q. And so, sir, is it your testimony then that a valuation was conducted within Lehman of all of the assets that are being transferred to Barclays? When was that conducted?

A. Portfolio moved during the week, but that was conducted all last evening. All through and up to the arrangement -- the agreement today.

Q. And, sir, was it the case that at the time of the meeting that took place with creditors this past Wednesday, LBI had approximately --

MR. MILLER: Excuse me, Your Honor, Thursday.

MR. QURESHI: I apologize, it was Thursday.

THE COURT: I'll take that as an objection to the question, and it's sustained.

Q. Am I correct, sir, in understanding that at that time creditors were told that LBI had approximately 1.3 billion dollars in cash?

A. That's correct.

Q. Okay. And at that time, the deal was that 700 million of those funds would go to Barclays, and the remaining 600 million would stay at LBI?

A. That's correct.

Q. And what is the cash balance at LBI today?

A. It's virtually nil.

Q. Where did it go?

A. To the CME. Liquidation of the CME trades. And to all the other clearing banks involved in processing of the transactions this week.

Q. Sir, since the time that the agreement was first entered

into with Barclays early in the week, are you aware of any affirmative efforts of having been undertaken on behalf of Lehman to shop these assets to any other potential purchasers?

A. The assets, specifically, the inventory assets?

Q. The assets being acquired by Barclays or any subset of those?

A. No. Nor -- no.

MR. QURESHI: Your Honor, may I have one moment, please?

THE COURT: Sure.

Q. Sir, are you familiar, generally, with the terms of the DIP financing agreement?

A. Generally.

Q. Okay. Is it your understanding that if the transaction with Barclays does not close, that that would constitute a default under the DIP?

A. Thirty days to repay. It's thirty days to repay.

Q. So it would trigger a thirty-day repayment of it?

A. Yes.

Q. Okay.

MR. QURESHI: Thank you, Your Honor, that's all I have.

THE COURT: Is there anyone else who wishes to examine the witness?

MR. ROSNER: Your Honor, if you can see me, I'm right

here. I'd like to --

THE COURT: Well, Mr. Bienenstock is ahead of you. So you're going to have to move to a position where you can both be seen and heard.

Mr. Bienenstock, it's your turn.

MR. BIENENSTOCK: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. BIENENSTOCK:

Q. Good evening, Mr. McDade.

A. Good evening.

Q. My name is Martin Bienenstock, representing the Walt Disney Company. Yesterday, I understand that you were at the information session at Weil Gotshal?

A. That's correct.

Q. And I want to confirm some information given there. Pursuant to the proposed asset purchase agreement here, the businesses that are being -- the Lehman businesses being transferred to Barclays are as follows: Tell me if I'm incorrect, I'll read one at a time. Investment Banking?

A. Correct.

Q. Fixed Income?

A. Correct.

Q. North American Operations?

A. Correct.

Q. Credit?

A. Correct.
Q. Lending?
A. Correct.
Q. Municipal Bonds?
A. Yes.
Q. Commodities?
A. Correct.
Q. High Yield?
A. Yes.
Q. Derivatives?
A. Yes.
Q. Government Bonds?
A. Yes.
Q. Interest rates derivatives?
A. Yes.
Q. High grade credit?
A. Yes.
Q. Cash and credit derivatives?
A. Yes.
Q. Money market?
A. Yes.
Q. Commercial paper?
A. That's the same.
Q. Commercial lending?
A. Commercial lending, if you mean the leverage finance

business, yes.
Q. Foreign exchange trading?
A. Yes.
Q. Prime brokerage?
A. Yes.
Q. Prime services?
A. That's the same business.
Q. Sorry, I'm not familiar.
A. No problem.
Q. Cash equities?
A. Correct.
Q. Convertible bonds?
A. Yes.
Q. Long/short proprietary trading?
A. Yes.
Q. Customer options and futures?
A. Yes.
Q. Equity prime brokerage?
A. Yes.
Q. And to transfer those businesses, I take it, the one necessary component is the transfer of employees to Barclay?
A. Absolutely.
Q. And how many employees did you say will be going over to Barclays?
A. Approximately 9,000.

Q. And at Lehman Brothers and its subsidiary entities, do employees work across legal entities in business lines or is there a different employee for each legal entity?
A. Most of the employees in the U.S. work for the U.S. broker-dealer, LBI. Most of the LBH employees were actually corporate functions, operations financed technology which supported the capital markets units in particular.
Q. So the employees then who worked for Lehman Brothers Commercial Corp. are technically employees of LBI, is that correct?
A. Lehman Brothers Commercial Corp.?
Q. Yes.
A. I'm not familiar with that legal entity.
Q. Foreign exchange trading?
A. Foreign exchange trading, yes.
Q. Okay. And Lehman Brothers Finance, are those employees employees of -- are the employees who operate Lehman Brothers Finance, are they employees of LBI?
A. Lehman Brothers Finance, you mean the finance professional staff?
Q. I think the technical name is Lehman Brothers Finance S.A.
A. Lehman Brothers Finance S.A. is one of our derivative subsidiaries.
Q. Okay. And the employees who work that business are employees of LBI?

A. Correct.
Q. And the same goes for Lehman Brothers Equity Finance (Cayman) Ltd.?
A. Correct.
Q. And for Lehman Brothers Commercial Corporation Asia Ltd.?
A. Correct.
Q. And for Lehman Brothers Bankhaus A.G. Seoul branch?
A. That's a funding vehicle, it's a bank.
Q. Okay. And for Lehman Brothers Commodity Services, Inc.?
A. That's correct.
Q. Are you sure you have no recollection of Lehman Brothers Commercial Corp., LBCC?
A. No, I do not.
Q. Okay. But, in general, the subsidiaries of Lehman Brothers Inc. and Lehman Brothers Holdings Inc. use employees of those two entities?
A. That's correct.
Q. So as a consequence of this asset purchase agreement if it's closed, the businesses and those subsidiaries will have to be wound down, is that fair?
A. The businesses in the subsidiaries?
Q. Yes.
A. The vehicles themselves?
Q. Well, let me ask it this way. Those subsidiaries will stop transacting new business, I take it?

A. If Barclays so chooses, yes, that's correct. In terms of the process.
Q. Okay.
A. We're still in a period, obviously, of working through the dynamic of how the Barclays/Lehman integration, if it were to happen, would take place.
Q. And along with the sale, what was referred to, I think at the information session, as the infrastructure, which I take it are the data processing and other items that enable the businesses to work, that's being transferred over to Barclays?
A. That's correct.
Q. And that would apply -- and that's the same infrastructure that enables the subsidiary's businesses to work, is that correct?
A. Very different infrastructure, it's trading infrastructure in particular. So trading platforms. The reason the data centers are so important is the volume of electronic trading taking place, for example, in equities. So it's a very different infrastructure.
Q. Okay. Let me clarify that. Are you saying that the infrastructure that's moving over to Barclays to cover all the list of businesses that you agreed were being transferred, is different than the infrastructure that helps run the subsidiaries?
A. I'm sorry. There are different forms of infrastructure,

it's a broad term covering a lot of different aspects of responsibilities for running these businesses.

Q. But the infrastructure for running all of the businesses we went through at the outset is moving over to Barclays?

A. That's correct.

Q. At I think it's LH 745, the owner of the headquarter building, who was that note payable to?

A. The intercompany?

Q. Yes.

A. I don't know the specifics.

Q. Do you know whether the money will be -- do you know whether that note payable will be satisfied at closing?

A. I believe it's already been -- I believe it was already answered earlier that it was satisfied previously at this point. I don't know specifically.

Q. There was lawyer's colloquy, but I just want to -- this is the evidence part.

A. I do not know specifically.

Q. Okay. In running the businesses that we spoke about earlier, would you agree that it's the employees that are critically important?

A. Absolutely.

Q. When you negotiated this deal with Barclays, tell me, were you at the table?

A. Absolutely.

Q. Okay. And who were you negotiating on behalf of?

A. I was negotiating on behalf of the estate.

Q. The estate of LBHI?

A. There were two phases of the negotiation. The weekend conversations, which obviously did not transpire. And then this phase of the negotiations.

Q. When you refer to estate, is it fair to say you meant Lehman Brothers Holdings Inc. --

A. Correct.

Q. -- and Lehman Brothers Inc., and Lehman Brothers 745?

A. Correct.

MR. BIENENSTOCK: No further questions, Your Honor.

THE COURT: Thank you. Mr. Sabin, are you going to question?

MR. SABIN: I do, Your Honor.

THE COURT: What happened to that gentleman that raised his hand and sat down --

MR. ROSNER: I'm sorry. I think Mr. Sabin was prepared to go next. So if that's okay with Your Honor, it's certainly okay --

THE COURT: It's perfectly fine. You just seemed very interested to be the one who was going to take Mr. Bienenstock's spot.

MR. ROSNER: No, it's just sometimes I'm hard to be seen.

THE COURT: Okay. Well, you'll be next if you want to be.

MR. ROSNER: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. SABIN:

Q. Mr. McDade, good evening. I'll try to be brief. Are you familiar with the conditions to closing of this proposed transaction?

A. (No verbal response)

Q. And is it fair to say that one of those conditions require a certain level of employees to be identified and to be anticipated to go to becoming employed by Barclays?

A. That's correct.

Q. In your view as of today, is that condition satisfied or capable of being satisfied?

A. That condition is still being worked through. You'd have to speak to Barclays in terms of the specifics of their satisfaction.

Q. Let's just assume for the moment that that condition could be satisfied, are the employees who that condition speaks of and identifies in any way, shape or form necessary to the continued operation of any of the existing subsidiaries of LBI today?

A. No.

Q. Lastly, Mr. McDade, there is a condition that was

negotiated that otherwise requires before Barclays funds, that this Court had entered a final order with respect to certain aspects of the sale. Has Barclays indicated to you that if there were an appeal that they would close in the face of an appeal if it were not safe?

A. I have not been part of that type of discussion.

MR. SABIN: I have no further questions. Thank you.

THE COURT: Please state your name?

MR. ROSNER: Sure. Good evening, Your Honor. David Rosner from Kasowitz, Benson, Torres & Friedman.

MR. MILLER: Your Honor, do we know who Mr. Rosner represents?

THE COURT: He filed an objection which I saw and read. But who do you represent?

MR. ROSNER: Apparently, Mr. Miller didn't get a chance to read it.

THE COURT: He's been busier than I have been. I've been preparing for this hearing and he's been doing other things as well.

MR. ROSNER: Bay Harbour, there's four Bay Harbour entities that are identified. And actually I just have a few questions.

CROSS-EXAMINATION

BY MR. ROSNER:

Q. At what point did Barclays express interest in any part of

Lehmans?

A. In any part of Lehman, the discussion started last Friday evening.

Q. Did Barclay sign a confidentiality agreement?

A. Yes, it did.

Q. Did you see that confidentiality agreement?

A. No, I did not.

Q. Do you know when it was signed?

A. No, I do not. I assume Friday.

Q. Do you know if it was signed before they got access to any information from Lehmans?

A. I do not know.

Q. When did they actually get access to Lehman confidential information?

A. I do not know.

Q. You weren't involved in the process at all of providing confidential information to --

A. When that process started I was negotiating with another party.

Q. Do you know what Lehman did in -- I'm sorry, do you know what Barclays did in terms of seeking information from Lehmans?

A. Do I know the specifics --

MR. MILLER: Your Honor, please, can we identify in connection to what transaction?

MR. ROSNER: I'm sorry?

MR. MILLER: In connection with which transaction?

MR. ROSNER: In connection with the transaction that we have here today.

THE COURT: Okay. It's an objection. The question has been clarified. Is the objection withdrawn as a result of that?

MR. MILLER: Yes, sir.

MR. ROSNER: Okay.

Q. I'm sorry, was I not clear in the question? I want to be clear, so if I'm not clear please feel free to interrupt.

A. I think it's important to note there were two sets of discussions. The first over the weekend, organized specifically on behalf of the markets and energized by the Federal Reserve and other regulatory bodies. Those discussions ended without a transaction, new discussions began the next morning.

Q. Okay.

A. The information used in both of those processes were reasonably similar, obviously with any updates that might have been appropriate.

Q. Got you. Was there an amendment to a confidentiality agreement, or was there --

A. Again, I was not directly part of those conversations.

Q. Are you aware of anything that Barclays asked for from Lehman that Lehman did not provide in terms of information in

order to make an assessment as to whether to go forward with a transaction?
A. I'm not specifically aware of anything that they asked for that we could not provide.
Q. Are you aware of whether they asked for or were given information regarding intercompany transactions?
A. I'm not aware specifically.
Q. Does that include intercompany payables?
A. Again, not aware specifically.
Q. And intercompany receivables as well?
A. Yes, sir.
Q. Okay. Are you aware today if there's an intercompany payable to what I'll call LB -- do you know what I mean by LBIE?
A. Yes.
Q. Are you aware today whether there's an intercompany payable to LBIE by either of the debtor entities?
A. Yes.
Q. How much is it?
A. Approximately five billion.
Q. And where did that one arise?
A. I'm sorry?
Q. Where did that -- I'm sorry. Where did that intercompany payable arise? From where did that intercompany payable arise?
A. I think it's a series of transactions. I'm not aware of

the specifics.
Q. Are you aware of any of the specifics?
A. No.
Q. Not a single one?
A. With respect to the intercompany?
Q. With respect to the intercompany payable from these debtors to LBIE?
A. I know the notional amount.
Q. Okay.
A. Five billion.
Q. Do you know if money was transferred from LBIE to the debtor entities on Friday, the last week?
A. I'm not involved in the day-to-day process of financing the firm.
Q. But my question was whether you were aware of that?
A. No, I'm not specifically aware.
Q. Have you read anything about that?
A. Absolutely.
Q. You have read something about that?
A. Have I read it in the media, is that what you're referring to?
Q. Yes.
A. Yes.
Q. And you did testify that you were at the meeting yesterday at Weil Gotshal?

A. I was at an afternoon session. My understanding is there was more than one session.

Q. And these questions were asked as to the intercompany payable, correct?

A. Uh-huh.

Q. And do you recall whether --

THE COURT: You have to answer with more than a nod of the head. Thanks.

THE WITNESS: Sorry.

Q. And do you recall whether this information that I'm asking now was given yesterday at the information center?

A. It was not given yesterday.

Q. Which debtor entity owes that money to LBIE?

A. LBI is a payable to LBIE.

Q. And what about Holdings?

A. LBIE is a payable to LB Holdings.

Q. And how much is that?

A. Eight billion.

Q. And do you know what that's derived from?

A. No.

Q. Did you do an audit of the -- I'm sorry. Has an audit been accomplished of the securities that are to be transferred to Barclays under the proposed transactions?

A. If you mean an audit by external valuation process?

Q. By identification of the securities?

A. Absolutely, line by line.
Q. I think during your proffer it was stated that you are familiar with the contract. I assume that means you don't know every line but you are generally familiar with the contract that's before the Court today, is that a fair statement?
A. Yes.
Q. Are you aware of the closing conditions under the contract?
A. I believe so.
Q. Are they all satisfied as of today, subject to the entry of an order by this Court?
A. With respect to all those that I have knowledge of, yes.
Q. And I think there was a question, but I just want to be clear. There is a closing condition regarding eight employees signing up agreements, is that correct?
A. That is correct.
Q. And I might have missed this before, and have all of those eight employees been signed up?
A. We expect no issues with respect to the employment services needs to close.
Q. Okay. So as of sitting here right now, that condition has not been met?
A. We expect no issues.
Q. For the record, it's a yes or no and I just want to make it clear on the record?

A. I do not have the specific information with respect to either the exact number of those participants or with respect to Barclays' view as to whether that would be waived if, indeed, that became an issue.

MR. ROSNER: Okay. I have nothing further, Your Honor. Thank you.

THE COURT: Okay, thank you. Is there anyone else that wishes to examine Mr. McDade? Come forward. Please state your name and identity of the client that you're here to represent.

MR. BYRNE: Yes, Your Honor, good afternoon. Larry Byrne from Linklaters. Linklaters, Your Honor, represents the administrators who have been appointed to supervise the insolvency of four Lehman Brothers entities in the U.K. and in Europe.

THE COURT: These are the Pricewaterhouse people?

MR. BYRNE: Yes, Your Honor.

THE COURT: Okay.

MR. BYRNE: So we act for Pricewaterhouse who are now the insolvency administrators in the U.K. for these four Lehman Brothers entities who are affiliates of subsidiaries of the debtors.

THE COURT: Okay. You may proceed with your questions.

CROSS-EXAMINATION

BY MR. BYRNE:

Q. Good evening, Mr. McDade. The hour's late, so I have just a few questions for you following up on the previous questions.

You referred to an intercompany payable in the amount of five billion and an intercompany payable in the amount of eight billion. Do you know when those payables first arose or came into existence?

A. No, I do not.

Q. When did you first become aware of them?

MR. MILLER: Excuse me, Your Honor. I'm not quite sure I understand how that relates to whether the sale should be approved or not. It seems to be the administrator in London is trying to find out information concerning whether it has a claim against this estate, what's going to happen to that claim. It doesn't go to this transaction.

THE COURT: Well, let me observe that I have read a number of objections that have raised questions concerning whether this transaction, if approved, would affect the ability of parties-in-interest, including the Pricewaterhouse foreign representatives, I'll call them for these purposes, in being able to pursue a claim for recovery in this estate of the eight billion dollars that, according to the objection that I read, was allegedly swept from LBIE on Friday, a week ago, to the accounts of LBH. And that didn't come back to LBIE on Monday presumably as a consequence of the bankruptcy filing. And so I

don't know that this goes to the reasonableness of the debtors' business judgment in proposing that this transaction be approved this evening, as much as it goes to the legal affect of such approval in light of the ambiguities -- alleged ambiguities and vagueness -- the alleged vagueness of the asset purchase agreement and the various documents that have been offered up to parties-in-interest.

So with that, I overrule your comment and will permit the examination.

MR. BYRNE: Thank you, Your Honor. May I proceed?

THE COURT: Yes.

BY MR. BYRNE:

Q. When did you first become aware of these two intercompany payables, the eight billion, the five billion, apart from press reports?

A. I followed up post the session that we had yesterday to make sure I had the information.

Q. And what information did you learn as a result of that follow-up?

A. The previous statements that I made with respect to the nominal amounts.

Q. I'm not sure I understand what you're saying.

A. LBI has a payable to LBIE. LBIE has a payable to LBH. Those are the figures and data that I researched.

Q. And following up to confirm those figures and data, what

is it that you looked at?

A. I looked at a summary finance document from one of our senior finance officers.

Q. That's an internal document at Lehman?

A. That's correct.

Q. And who is the senior finance officer that had prepared that?

A. I don't know who prepared the document. The interaction I had was with a gentleman named Chris O'Meara.

Q. I'm sorry, I couldn't hear you.

A. Chris O'Meara.

MR. BYRNE: Your Honor, I don't think I have any further questions at this time. I would like an opportunity either now or later just to clarify a couple of things you said with respect to the PWC administrator's position. Because they're actually not objecting to this transaction.

THE COURT: Oh, great. I assumed because you were asking questions that you were getting in the way of it.

MR. BYRNE: No, not at all, Your Honor, we just wanted clarification based on the questions that were asked earlier. You may not have seen, because it did not get electronically filed until shortly before the hearing, what the administrators have filed, which is a response to the proposed settlement, not an objection. And we say in the first line of that response that the administrators have no objections to the

approval of this transaction this evening.

There are some clarifications we're going to seek, but we can do that later in the proceeding with the Court's permission.

THE COURT: Fine. The only thing I read was the declaration that was filed. In order to triage the preparation for this hearing, I read things that I thought would be helpful.

MR. BYRNE: Right. We have a declaration from the PWC administrator --

THE COURT: That's what I read.

MR. BYRNE: Okay. I think the transaction details you're describing might have been in someone else's objection, not in ours.

THE COURT: If I misstated the facts it's because I didn't understand --

MR. BYRNE: Understood, Your Honor. I have nothing further at this time, Your Honor.

THE COURT: Okay. Is there anyone else that would -- Ms. Granfield?

MS. GRANFIELD: Good evening, Your Honor. Lindsay Granfield, Cleary Gottlieb Steen & Hamilton, LLP on behalf of Barclays Capital.

Odd procedural posture. I think that there's going to be very able -- probably not too long an able redirect by

the debtor. And that might make it unnecessary for me to ask any questions. And, in fact, if there was a short recess, I might be able to confer with Mr. Miller on what he planned to cover and not make it necessary for me to ask any questions.

THE COURT: Well, before taking that welcomed recess, because I think people are probably ready for one, let me just confirm that there is no one else, other than yourself, at this moment, has an interest in asking any further questions of Mr. McDade?

MS. GRANFIELD: Very good, Your Honor.

THE COURT: I see no one moving in the direction of the podium, and I see no one indicating an interest in asking questions. So I'm going to assume that you are the last possible questioner on cross. And since its now about ten minutes to 8 in the evening and it is warm, and many people are standing, I'm going to propose that we take a break until 8:15. And we'll resume at that time.

MS. GRANFIELD: Thank you, Your Honor.

(Recess from 7:48 p.m. until 8:45 p.m.)

THE COURT: Be seated, please.

MR. MILLER: Once again, good evening, Your Honor. Harvey Miller for the debtors.

Your Honor, in the interest of expedition, I would offer into evidence the asset purchase agreement among Lehman Brothers Holdings Inc., Lehman Brothers Inc., LB 745 LLC and

Barclays Capital, Inc. dated as of September 16, 2008 and the first amendment to the asset purchase agreement among the same parties, Your Honor, dated September 19, 2008.

THE COURT: Is there any objection to the admission of the evidence of those two documents?

UNIDENTIFIED SPEAKER: Yeah. No, I haven't seen it.

UNIDENTIFIED SPEAKER: We haven't been given a copy even.

UNIDENTIFIED SPEAKER: Same, Your Honor.

UNIDENTIFIED SPEAKER: Your Honor, we would have the additional objection of it's unclear whether this even represents the final asset purchase agreement or whether terms are made to be negotiated.

THE COURT: I don't think it needs to represent the final. It's a document that -- assuming the first one is a document everybody's seen, the second one is the only document that may be subject to reasonable objection. And whether or not it is, in fact, the document that would govern the closing is irrelevant to its admissibility. That objection is overruled.

As far as the amendment, I'm certainly interested in seeing it. I'm sure others are as well. How many copies are there? Or are there copies?

MR. MILLER: As I said last time, Your Honor, modern technology is not what it's all cracked up to be. Your Honor,

I have --

THE COURT: I would also note that copies of a document, while a courtesy of counsel, are not a condition to admissibility. And if an offer of proof is made as to the authenticity of the document, the fact that it is what it purports to be, which is the second amendment, I'm prepared to admit it notwithstanding the fact that copies are not available, recognizing that there is an objection that is a reasonable one that all other parties to the transaction need to see a copy at some point so they have reasonable notice.

MR. MILLER: Your Honor, I would make an offer of proof that this is a document. This represents the asset purchase agreement that's dated as of September 16, 2008, which was attached or filed at 6 a.m., or whatever it was, in the morning, a couple of days ago with a lot of interlineations. This is a clean draft -- a clean copy, Your Honor. This is the execution -- a copy of the execution copy.

THE COURT: It is the hand-marked copy typed so that the edits that we saw in handwriting are now incorporated in full font?

MR. MILLER: That is correct, Your Honor.

THE COURT: Okay.

MR. MILLER: I would represent, Your Honor, that the first amendment to the asset purchase agreement, which consists of exactly four pages, dated September 19 -- and this is a copy

of the execution copy of that document, Your Honor, which clarifies certain provisions in the asset purchase agreement, and, Your Honor, is part of -- an integral part of the agreement and is signed on behalf of Lehman Brothers Holdings, Lehman Brothers Inc., LB 745 and Barclays Capital.

THE COURT: May I simply ask if the witness who's on the witness stand is familiar with that document or had anything to do with its execution, it might be in a position to further authenticate it?

MR. MILLER: May I approach, Your Honor?

THE COURT: Yes.

REDIRECT EXAMINATION

BY MR. MILLER:

Q. Mr. McDade, are you familiar with the fact that a first amendment was made to the asset purchase agreement?

A. Yes, I am.

Q. The document which I have shown you, have you seen that document before?

A. Yes, I have.

Q. Are you familiar with that document?

A. Yes, I am.

Q. Is that the first amendment to the asset purchase agreement?

A. Yes, it is.

Q. That was executed on behalf of the debtors?

A. Yes.

MR. MILLER: I offer it, Your Honor.

THE COURT: Notwithstanding the objection that copies are not available, it's admitted. So it's in evidence along with that first one.

(Copy of execution copy of asset purchase agreement among LBHI, LBI, LB 745 LLC and Barclays Capital, Inc. dated 9/16/08 and first amendment thereto dated 9/19/08 were hereby received as Debtor's Exhibit into evidence, as of this date.)

MR. MILLER: Thank you, Your Honor. If I might, Your Honor, I would like to hand up copies to you on -- so that'd be marked, Your Honor?

THE COURT: If you wish to have them marked they can be marked. Thank you.

BY MR. MILLER:

Q. Mr. McDade, in your cross-examination concerning LBIE, you made reference to the notional value of the payables and the receivable. What did you mean by "notional value"?

A. The -- the notional of eight billion was the -- the figure, the gross figure at the bottom of the calculation.

Q. Does the transaction contemplate a transition services agreement?

A. Yes, it does.

Q. And what would that agreement provide?

A. Those would provide services to Barclays and back with

respect to all of the associated business responsibilities that would be necessary to continue the business as it moves on -- the businesses as they move on.

Q. And is that agreement in the process of being negotiated right now?

A. Yes, it is.

Q. Have you formed an opinion as to whether that will come to fruition?

A. Yes, I did.

Q. And what is your opinion?

A. Yes, it will.

MR. MILLER: I have no further questions of this witness, Your Honor.

THE COURT: Given that very limited redirect, I would hope that further examination would be held to a limited period given the hour. But I don't wish to restrict the examination of any party-in-interest who wishes to further examine only with respect to the subject of the redirect.

I see no interest in further questioning. I believe it's now timely to excuse the witness. Mr. McDade, thank you. You're excused.

THE WITNESS: Thank you, Your Honor.

MR. MILLER: Your Honor, I am pleased to announce that we have reached agreement in respect of the value of the real estate. As Your Honor may recall, there was a difference

of opinion between Barclays and Lehman. The Barclays appraisal, Your Honor, which I referred to, that was made by CB Richard Ellis, was an appraisal for the building and states specifically in the appraisal, Your Honor, the appraisal premise is as is, assuming market tenant in place.

I told Your Honor if there is no tenant in place the value of the buildings really depreciates. That appraisal, Your Honor, was one billion twenty million dollars. Barclays obtained an appraisal for the building at 900 million dollars, Your Honor. The parties have agreed to split the difference. That's so that the value that would go to the estate, Your Honor, is 960 million dollars.

As to the two data centers, Your Honor, Barclays has agreed that the appraisal values obtained by Lehman for those two properties, which total 330 thousand dollars --

THE COURT: Three hundred thirty million, perhaps?

MR. MILLER: Three hundred thirty million dollars, Your Honor. It's getting late. So that there would be a billion 290 -- I'm sorry, a billion 290 million dollars as the purchase price, and there will be no brokers' commissions, Your Honor. So that will be the amount received if this transaction's consummated.

THE COURT: All right. So, notwithstanding some of the things that came up during the opening remarks and the examination of the witness, there is, at this moment, a

stipulation which you have put on the record that the real estate component of the transaction, in the aggregate, and I just want to be sure, that the number will be valued at one billion 290 million dollars and there will be no commission payable.

MR. MILLER: That is correct, Your Honor.

THE COURT: Fine. Thank you.

MR. MILLER: Okay. Your Honor, just one observation. We told Your Honor that if this transaction were to be approved in a relatively short period of time that, if we can, we could transfer the accounts before 10:45 p.m.

THE COURT: Let's get to work.

MR. MILLER: Okay. Your Honor, our next witness would be Mr. Barry W. Ridings of Lazard. And I would also, Your Honor, do a fast proffer.

THE COURT: Is there any objection to proceeding by means of a proffer with respect to Mr. Ridings' direct examination?

There's no objection. Please proceed.

MR. MILLER: Your Honor, if Mr. Ridings were called to testify in support of the sale motion, his direct testimony would be as follows:

Mr. Ridings joined Lazard in July 1999; is co-head of the restructuring group. He has a BA from Colgate University and an MBA in finance from Cornell University.

From 1990 to 1999, Mr. Ridings was the managing director of BT Alex. Brown and this restructuring group.

Before that, Mr. Ridings served as a managing director in the restructuring group at Drexel Burnham and Lambert. Interesting. As a result of his experiences --

THE COURT: At least we have somebody to point the finger at.

MR. MILLER: As a result of the experiences at Drexel, Mr. Ridings knows of the consequences of failure of a major investment bank and the costs in dislocation that occur.

Since 1990, Lazard's professionals have been involved in over 250 restructurings, representing 350 billion dollars in debtors' assets.

Mr. Ridings is the head of Lazard's capital markets group, which is the Lazard unit responsible for equity and bond sales, trading and research business, which is the same business being sold by LBI to Barclays.

Mr. Ridings has testified in many reorganization cases, including Macy's, Western Union, Owens Corning, Marble Entertainment, Fruit of the Loom, Sun Healthcare, Wang Laboratories and Vlasic Foods.

He is also a former member of the board of directors of the American Stock Exchange and serves on corporate boards, including New Valley Corp. and other corporations.

Mr. Ridings has been the principal investment banker

on over twenty-five public offerings of high-yield debt. He also has extensive experience with IPOs, opinion letters and M&A transactions.

Lehman retained Lazard and Mr. Ridings to offer investment banking and financial advice. Mr. Ridings' work in this matter also involved assisting in the sale of the various assets.

He was intimately involved in the negotiations between Lehman and Barclays that resulted in the asset purchase agreement. He would testify that he has become reasonably familiar with Lehman's business and has reviewed the terms and provisions of the asset purchase agreement with Barclays.

Mr. Ridings would testify that over the past year the financial markets have been extremely volatile with negative consequences to Lehman and other similar firms.

He would testify that Lehman has faced a continued lack of liquidity in the credit markets, significantly depressed volumes in most equity markets, a widening in fixed income credit spreads compared to the end of 2007 fiscal year as well as declining asset values. As a leading firm in the financial markets, these factors have had a materially negative impact on Lehman.

He would testify that there was downward pressure on financial asset prices, and Lehman's inventory positions diminished in value and its liquidity began to contract.

In addition, Lehman's transactional volumes and market activity for Lehman's capital markets and investment banking business segments also contracted.

Lehman's portfolio was particularly vulnerable because it held significant volumes of illiquid residential mortgages and structured credit products.

At the time of Lazard's engagement, he was aware that Lehman's management was exploring several different options to deal with the crisis. Specifically, he is aware that Lehman explored selling its investment management division to raise much needed liquidity, and it also considered spinning off some of its illiquid real estate assets.

Before any of these strategic maneuvers came to fruition, the company was forced to file the Chapter 11 cases because its assets were rapidly depreciating and they could not raise additional liquidity.

Mr. Ridings would also testify that the sale of LBI must be immediately consummated or there will be little or nothing to sell.

There are few potential purchasers for this business because any buyer must meet regulatory requirements, have sufficient capital and have the strategic capability to operate the business from day one.

He would testify that he and other members of the Lazard team were involved in the discussions and negotiations

with Barclays.

Mr. Ridings would testify that the negotiations were at arm's length, difficult and aggressively negotiated by the parties, that the asset purchase agreement is the result of good faith negotiations.

He would testify that the parties worked around the clock to finalize the purchase agreement because they realize that time was of the essence and that the business would not survive without an immediate infusion of new liquidity.

Between Monday and Wednesday of this week, he would testify the parties exchanged numerous bids and asks and turned drafts of the agreement countless times.

He would also testify that since executing the asset purchase agreement the parties have continued to work nonstop in order to prepare for closing, contracts have been identified for assumption or assignment and, with the authority from the Court, debtor-in-possession financing was obtained for LBHI.

He would testify that these assets have substantially greater value if they are sold as a going concern. Despite the tremendous publicity associated with this case, not one firm, other than Barclays, showed up with an interest in the assets as a whole. Without Barclays, Lehman would be forced to sell discreet assets for a fraction of the value that will be realized from this transaction.

By selling the business as a going concern, Lehman

has preserved approximately nine to ten thousand jobs for its employees and avoided significant costs and claims that would have resulted if there were mass layoffs and a cessation of operations.

He would also testify that calls were placed to a number of prospective bidders over this week. He would testify that Lehman's situation was widely known in the financial services industry and yet no one really appeared to show an interest.

He will testify that Lazard had twenty-one contacts with entities that expressed an interest but not one of them, nor any other entity, had expressed the desire or ability to step into Barclays' shoes.

Practically, he would testify there were few potential purchasers for these assets. Of this universe, most of the funds that could purchase these assets have their own cash flow problems to contend with and are not looking to expand.

Any prospective purchaser would need access to the Federal Reserve Funds to operate Lehman's business. The list of firms authorized to trade directly with the Federal Reserve System and borrow from the so-called "window" is limited. Each entity must meet stringent capital and regulatory requirements.

He would testify that, in his opinion, Barclays' offer is the highest and best offer for these assets.

Lehman is selling its North American investment banking and capital markets business. This business focuses on fixed income, equities, trading, advisory services, futures and investment banking. The costs to Lehman and counterparties, as pending transactions unwind, if this transaction is not approved, will run into the many billions of dollars. Counterparties will be required to liquidate their collateral positions, which may entail a wholesale dumping of the collateral into the marketplace with the attendant erosion of values. The deficiencies that counterparties may incur will result in massive claims against the assets of the Lehman estates. Ten to twelve thousand employees may not find any employment. Any failure to consummate may potentially cause a major shock to the financial system.

Although the potential sale of Lehman assets has generally been known to the financial community for many months and that the current transaction has gotten enormous and wide media attention, as previously stated, only twenty very limited inquiries were made from outside parties.

Again, he would testify, Your Honor, the universe of potentially qualified and capable purchases is extremely limited by the huge financial commitment that would have to be made and the ability to access federal funds. At most, there are less than a half dozen possible entities that might qualify, and most of them have their own financial needs.

In conclusion, it is Mr. Ridings' opinion, he would testify, that this sale transaction should be approved because it serves the best interests of the creditors, the public and the nation and that it was negotiated in good faith and at arm's length by both parties.

That concludes the proffer, Your Honor.

THE COURT: Is there anyone who objects to my receipt of the proffer in evidence or who wishes to examine Mr. Ridings on cross-examination?

MR. QURESHI: Your Honor, again, Abid Qureshi, Akin Gump Strauss Hauer & Feld, on behalf of the informal committee of note holders -- the informal group of note holders. We would like to cross-examine Mr. Ridings briefly.

THE COURT: All right, Mr. Ridings, would you please come to the stand? Mr. Ridings, please, before sitting down, just raise your right hand. I'm going to swear you as a witness.

(Witness duly sworn)

THE COURT: Please be seated.

CROSS-EXAMINATION

BY MR. QURESHI:

Q. Good evening, Mr. Ridings. Sir, when was Lazard first retained in connection with this engagement?

A. Lazard had been working with Lehman since July. We had an engagement letter signed last Friday, before the filing, in

connection with the transactions that did not happen. And then we were re-retained on, I guess, Monday afternoon, after the filing.

Q. Okay. And, sir, is it correct that you are, again, generally familiar with the terms and the provisions contained in the asset purchase agreement?

A. Yes.

Q. And in your proffer the preservation of nine to ten thousand jobs was discussed, correct?

A. Yes.

Q. And is it your understanding that Barclays' obligation, under the terms of the asset purchase agreement, is to only keep those employees for ninety days?

A. I think, under the terms of the agreement, all nine to ten thousand people will be offered a job for ninety days, and at the end of that period Barclays will decide if they want to offer them full-time employment or not and, if not, they will be given severance according to Lehman's normal severance policy.

Q. Okay. With the severance to be paid by whom?

A. Barclays.

Q. Okay. So the obligation to employ runs only for ninety days?

A. I don't know that there's a commitment only for ninety days. It's unimaginable to me that they can run the business

without people.
Q. Sir, are you generally familiar with the closing conditions contained in the APA?
A. Generally.
Q. Okay. And, according to your understanding, as you sit here today, have all of the closing conditions been satisfied?
A. I don't know.
Q. Okay. Are you aware of any specific closing conditions that have not been satisfied?
A. I don't know.
Q. Okay. Are you aware, sir, of the provision in the asset purchase agreement that requires contracts to be negotiated with eight key employees?
A. Yes.
Q. Is it your understanding that that is a closing condition?
A. Yes.
Q. Is it your understanding that that closing condition has been satisfied?
A. I don't know.
Q. Okay. Is it your understanding that that closing condition has been waived by Barclays?
A. Not that I know of.
Q. Okay. Sir, is it also your understanding that one of the closing conditions is that, I believe, a prior version of the APA used the term "substantial majority" of so-called "critical

employees" agreed to go with Barclays upon the closing of the transaction?

A. My understanding: that it's that they don't leave. I don't know that there's an agreement that they go.

Q. That they are acquired by Barclays, in other words?

A. In other words, they haven't left before the closing.

Q. Right. And is it your understanding --

MR. QURESHI: Or, strike that.

Q. Do you know if that closing condition has been complied with?

A. We're closing tonight or we're not closing?

Q. Do you have an understanding of whether the substantial majority of the employees on that list have agreed to stay upon the closing?

A. That's not the -- they don't leave. It's not that they agreed to stay. And at close of business I saw people working, albeit not everybody was at their desk.

Q. Sir, in your proffer -- through your proffer you testified that Lazard has contacted a number of entities in connection with attempting to find buyers for these assets. Is that correct?

A. Can you clarify when?

Q. Well, that is going to be my question. Since the transaction with Barclays was signed up, has any effort been made by Lazard to try to find an alternative buyer for the same

assets being acquired by Barclays?
A. Okay. There's a two-part answer: Number one, we responded to inquiries coming in in the form of phone calls, fax and letters. We spoke with all of those people. And as mentioned in the proffer, not one of those people offered to buy the assets that Barclays is buying. Those inquiries ranged from someone who wanted to buy the phone system to people who wanted usually to buy real estate.

In terms of reaching out to other parties, as Mr. Miller suggested, there's a very limited number of people who would be qualified. Almost every single one of those limited people have either just completed an acquisition or are in the midst of an acquisition or a merger.

It was my belief that it would not serve a purpose for me or Lazard to reach out to those parties and say would you like to bid for fear of throwing more panic on this offering.

Based on what's been reported in the papers, if those people were interested they would have called.
Q. So am I to understand, sir, that your testimony is then that Lazard, on behalf of the company, made no affirmative effort to reach out to potential buyers for these assets but responded only to inquiries that were received?
A. Based on what I said, yes.
Q. Okay. And, sir, in terms of the inquiries that were received, were those people that inquired told that subsets of

the assets being acquired by Barclays were available? Or were those people told that they would only be considered if they wanted to buy everything?

A. The latter.

Q. Okay. And why is that, sir?

A. Because Barclays wasn't willing to close if they could -- people could cherry-pick assets.

Q. Okay. So do you know, for example, if any offers were received through inquiries coming in to Lazard for the real estate assets that exceed what Barclays is prepared to pay for the real estate assets?

A. The real estate inquiries we got are for things that we call CRE, commercial real estate, and they are not the assets that are being sold to Barclays.

Q. So your testimony is that none of the inquiries that Lazard received for any of the assets going to Barclays were specific offers with respect to the same real estate being acquired by Barclays?

A. Well, my understanding was that the inquiries for the real estate were for the commercial real estate, not the securities that Barclays is buying. Yes, that's my understanding.

Q. Sir, I'd like to ask you a question about the amendment to the purchase agreement that we just received. If Mr. Miller has a copy that I could hand up to the witness, that would help.

MR. MILLER: Here.

MR. QURESHI: Thank you. May I approach, Your Honor?

THE COURT: You may.

Q. Mr. Ridings, first, were you involved in the negotiations concerning this amendment?

A. Concerning the amendment, generally. The words on the page, no.

Q. Okay. Let me direct your attention to paragraph 4. That's the holdback and adjustment provision. And, again, my apologies; I barely had time to read it. Can you please explain, if you can, what your understanding is of that provision and how it's to work?

A. I haven't read this either, so I can't explain it.

Q. So you were not involved in the negotiation of that particular provision?

A. Not of that paragraph.

Q. Okay.

MR. QURESHI: Your Honor, may I have a brief moment?

THE COURT: Yes.

Q. Sir, is it your understanding that Barclays is now demanding the holdback of 250 million dollars subject to certain offsets?

A. I mean, the paragraph says what it says. And I can read it for you, if you'd like.

Q. No, that's okay.

A. Okay.

Q. Sir, in your negotiations with Barclays, right, related to this amendment, did they make the demand to you that they wanted the holdback of 250 million dollars?

A. They did not make that demand to me, no.

Q. Okay. Are you aware of that demand having been made --

A. Yes.

Q. -- in the negotiations? Are you aware of Lehman having agreed to it?

A. I believe they've agreed to this.

Q. Thank you.

MR. QURESHI: Nothing further.

THE COURT: Is there anyone else who wishes to cross-examine Mr. Ridings?

Is there any redirect?

MR. MILLER: Just one question, Your Honor.

REDIRECT EXAMINATION

BY MR. MILLER:

Q. Mr. Ridings, you're aware of the additional amendments that have been made to the asset purchase agreement which were discussed earlier today?

A. Yes.

Q. And isn't it a fact that under those additional amendments and clarifications that the 250 million dollars, to the goodwill of LBI, is going to be paid to LBI?

A. That's my understanding. Yes, sir.

Q. So that that holdback provision has since been amended, and in the clarified agreement there will be 250 million dollars, if this transaction is consummated, that will go to LBI?

A. Yes.

Q. Thank you.

THE COURT: Mr. Ridings, you're excused. Thank you.

THE WITNESS: Thank you.

MR. BIENENSTOCK: Your Honor, I have one clarification on the record. We had submitted -- it doesn't affect your BNC. We had submitted, I think as Your Honor might have noted, two responses to the pending motion. When I cross-examined, I only cross-examined on behalf of the Walt Disney Company because, based on clarifications given to the Royal Bank of Scotland, they are satisfied and withdraw their response.

THE COURT: Thank you. Mr. Miller, do you have any more witnesses?

MR. MILLER: No, Your Honor.

THE COURT: We're relieved. Does that conclude the evidentiary portion of your case?

MR. MILLER: Concludes the debtors' case, Your Honor. I assume my friend, Mr. Sabin, has to have the last word.

MR. SABIN: Not the last. I'm just asking whether,

on the record, we can include the debtors' affirmative case with a clarification that was still left open, and that was as to whether master ISDA agreements and master securities contracts, other than those owned by Barclays, will not be sold as part of this transaction.

UNIDENTIFIED SPEAKER: Right. They will not.

UNIDENTIFIED SPEAKER: Correct.

MR. SABIN: Thank you.

THE COURT: Okay. We've got clarification, which I don't treat as part of the evidentiary record but rather as stipulation of counsel or a response to counsel's question.

I'll repeat my question to Mr. Miller: Do you have any other evidence that you wish to offer?

MR. MILLER: No, Your Honor.

THE COURT: Fine. Then the debtors' case, at least evidentiary case, in support of the proposed relief is concluded.

I'll simply ask if any of the objectors are intending to submit any evidence of their own in opposition to the pending motion.

Someone on the phone is rustling papers that we are all hearing, and you are disturbing hundreds of people. Stop it, please. And if there's anyone on the telephone who doesn't have their mute button pushed to mute, do so now.

Mr. Golden, do you have something you want to say?

MR. GOLDEN: No, I was just going to say that we did not intend to call a witness, Your Honor. We do not intend to call a witness.

THE COURT: I assume because nobody spoke that that was the -- but now we know, and I'm even happier to know that you do not intend to call witnesses.

It seems to me that, at this point, then, this comes down to either arguments in support of those objections that have not been either withdrawn, as in the case of Mr. Bienenstock's other client, or deferred, as in the case of any disputes with respect to cure amounts.

And so I'm going to ask, so we can do this expeditiously, who wishes to press argument? Unless Mr. Miller, as proponent of the transaction, wishes to say anything before he hears the objectors.

MR. MILLER: No, Your Honor. I think time is of the essence right now. I would just like to say, Your Honor, that because time is of the essence I've been informed by Ms. Bambach of the SEC that the regulators strongly support this transaction.

THE COURT: I will incorporate into the record of this proceeding statements made by counsel for the various regulators on Wednesday at the time of bid procedures being approved in which I heard and considered the various statements of counsel for the regulators in support of the transaction.

MR. MILLER: I would just add to that, Your Honor, when Mr. Gallagher spoke he said he didn't really have authority from the commission. But since that time, the SEC -- I mean, the commission has met, and he's been duly authorized and has the same position, Your Honor.

THE COURT: That's good to hear. Thank you. Mr. Despins?

MR. DESPINS: Your Honor, may I be heard very briefly? And I apologize for this but we're moving really quickly. And the first amendment -- Your Honor, we received that about an hour ago, and there may be an issue here. And I apologize but we just got it an hour ago. And, basically, this is an amendment that protects DTC against potential claims that may be made, and they're given collateral. I'm told that that collateral could be as much as six billion dollars.

And that's fine, Your Honor. We're okay with that. But the way this is drafted, they can keep this collateral until all guaranteed obligations have been satisfied, literally, one dollar left, they can keep six billion. I'm exaggerating but that's the way -- I raised this with counsel for DTC saying why don't we put in a provision in saying that the Court, Your Honor, retains jurisdiction to make sure that that situation does not present itself? And I don't believe that they're agreeable to that. It puts us in a bizarre position where -- we did not know about this provision. I

don't think it's intended that way but the way it's drafted they can hold six billion if there's a hundred thousand dollars of potential claims. We're not asking them to concede the point. We're asking them to make that subject to Your Honor's jurisdiction and further order.

THE COURT: Mr. Hirshon, do you want to comment with respect to that? If you don't want to be here I can understand why, but where do you want to be?

MR. HIRSHON: Right here, Your Honor.

THE COURT: Okay.

MR. HIRSHON: I'm having a good time. Your Honor, let me explain the situation because it's not quite right, what you've heard. It is true that the first amendment, as a contractual term, between the purchaser and the seller calls for an amendment under which instead of fifty percent of the residential mortgages a hundred percent of the residential mortgages are being sold to the purchaser. There is a separate agreement between the purchaser and DTC under which those mortgages are going to be used as collateral for the clearing corporations. So the collateral arrangements are part of the APA, and they're not subject to the APA and not subject, practically, to Your Honor's control.

So in order to make that possible, the APA had to be amended so that the other half of the residential mortgages are now owned by -- will be owned by the purchaser and therefore

pledged.

However, in order -- the parties themselves then said, well, we want to restore where we were before where you had fifty percent and fifty percent. So the APA then has in its amendment that, after the guaranteed obligations are satisfied, if there is anything left over, and as I said before, it's expected that there will be, then the purchaser will return the fifty percent to the seller. And that's what the APA says.

So it's in two pieces. The APA itself is simply a -- is amended simply to transfer the one-half that wasn't being originally acquired to the purchaser. There's a separate arrangement between DTC and the purchaser. And the APA then says and when you're done settling, if there's anything left, the purchaser has an obligation to return the fifty percent.

Now, this was --

THE COURT: May I understand something, and I apologize if I'm intruding on your argument, just to clarify something?

MR. HIRSHON: Please.

THE COURT: Who's the custodian of this? Isn't it DTC?

MR. HIRSHON: It is. That's where all these reside.

THE COURT: So aren't we just talking about accounting entries?

MR. HIRSHON: Yes, we are.

THE COURT: The mortgages aren't moving?

MR. HIRSHON: They are not.

THE COURT: And you hold these as a fiduciary for whoever has an interest in them?

MR. HIRSHON: Exactly. Mr. Despins, doesn't that cure the problem? Or what is the problem? It's not as if there's any risk that the assets are going to move.

MR. DESPINS: No, no. I'm not concerned that they're going to dissipate the assets; that's not the concern at all. I'm telling you my experience with depository companies, not this one, of course, but others, is that --

THE COURT: This sounds like a swipe at other companies to me, but go ahead.

MR. DESPINS: Yeah, is that they are not incentivized to release collateral. And, in fact, they will hold it four years unless there's a clear way to force them to release the collateral. We don't want the estate to be in a position where we're waiting for two or three years to receive potentially six billion dollars back, or a portion of six billion dollars back. That's my only concern.

They should be protected. I want to be clear about that. I am not saying they shouldn't be protected. I'm saying that Your Honor should be able to intervene in case of -- in the event that something is not returned because it is a

hundred thousand dollars of unsatisfied obligations. They're holding three billion. If that's not the case, we won't be here. We won't be here. But we --

THE COURT: Well, I --

MR. DESPINS: -- we don't want to be without recourse. That's all.

THE COURT: -- I understand the point, although -- and I don't diminish the point by saying that it seems a highly theoretical one to be pressing at this point in the hearing, given that the estate's interest, whatever it may be, is, I'll use the term, adequately protected, but I do understand this to be an issue of whether or not DTC will, this evening, consent to jurisdiction here for purposes of, in effect, being forced to make an accounting entry for the benefit of the estate when they are disproportionately oversecured by a gargantuan pool of mortgages in respect of a de minimis claim.

My sense is that if they are in that position and are resistant, that they would find themselves at the wrong end of some litigation somewhere.

MR. DESPINS: That is correct, Your Honor.

THE COURT: And I don't know that this is a particularly good time to force the issue, but I hear your argument and I understand that you're looking to have DTC blink on it. And I don't know if they're willing to do that this evening.

MR. DESPINS: No, Your Honor.

THE COURT: Okay. So --

MR. DESPINS: But is it clear that Your Honor will have -- will retain jurisdiction over that issue?

THE COURT: Well, it's not clear at all if we're talking about nondebtors arguing about relative rights in collateral posted to secured DTC's claims.

So I think that whatever I said tonight wouldn't create jurisdiction, and I'm not prepared to reach that question now. If the parties are willing to stipulate to jurisdiction, I'm not even sure that solves the problem. There either is or there isn't jurisdiction.

MR. DESPINS: And I'm not authorized to stipulate --

THE COURT: Fine.

MR. DESPINS: -- to jurisdiction.

THE COURT: So I think at this point the argument -- I understand the argument. We have a record on it. I trust that DTC will not act in a commercially unreasonable manner and that, whether or not this Court has jurisdiction, there are clearly courts of competent jurisdiction in a position to adjudicate future disputes.

MR. DESPINS: Thank you, Your Honor. And, Your Honor, just to be clear, we would have raised this a long time ago if we had seen the provision. We apologize but we just saw it an hour ago. Thank you.

THE COURT: Okay. Now what?

MR. GOLDEN: Is it time for the objections, Your Honor?

THE COURT: Yes.

MR. GOLDEN: Thank you. Daniel Golden, Akin Gump Strauss Hauer & Feld, on behalf of an ad hoc group of LBHI senior, sub and junior sub-bondholders, holding in excess of nine billion dollars of such bonds.

Your Honor, as I walk to the lectern tonight, mindful of Wednesday's hearings and tonight's proceedings, it reminds me of a fable, one involving my namesake: Daniel walking into the lion's den.

The bondholders recognize the seriousness of the circumstances that brings the debtor and the CIPC trustee before this Court. We recognize and they recognize, as economic animals, and fully appreciate the extraordinary circumstances that we all find ourselves in. And, yes, the ad hoc bondholder group can hear and it can count and it can see that the Federal Reserve Board, the Treasury, the various commodity exchanges, the SEC, the Department of Justice and the debtors all are desperate for this proposed transaction to be approved.

And we've heard many motivations for that, but two of them are what we've heard specifically: the need to stabilize the financial markets and the preservation of up to 10,000 jobs

of Lehman employees. And those are all worthy goals, and my clients recognize those goals.

But what we don't hear is at what cost and at whose expense this transaction should be approved. What we don't hear is why the Fed chose to bail out Bear Stearns and AIG and just announced a potential rescue plan, like an RTC-type bailout for all major financial institutions and yet somehow Lehman Brothers gets left on the sidelines. We don't hear why the Fed, despite choosing to ignore Lehman in connection with the bailout, is, frankly, directing and mandating that this sale to Barclays occur whether or not such sale is in the best interests of creditors and maximizes value for creditors.

And, yet, the debtors and the CIPC trustee are asking this Court to approve such sale, a sale whose terms, very material terms, are still not resolved. And yet Mr. Miller suggests that we should have a closing by 10:45 this evening.

And we've heard testimony, and I'll discuss that further, that the marketing process with respect to these assets, these assets which are the subject of this proposed sale, was basically nonexistent. We don't believe that this is a proper exercise of the debtors' fiduciary obligations.

Mr. Miller suggests when the committee initially indicated its position of not either supporting or opposing the transaction -- well, that's just a parochial interest of creditors as if to diminish the interests of creditors, but if

the debtors aren't prepared to look out for the interests of creditors, the creditors and the creditors' committee have no choice but to do so for themselves.

Your Honor may recall at the conclusion of Wednesday's hearing and at the urging of this Court and other parties in attendance at the court, the debtors and their professionals offered to hold a meeting -- or host a meeting at Weil, Gotshal to answer questions about the transaction. And certain important facts came out at that meeting, and they were reiterated during the proffered testimony this evening.

For several months prior to the Chapter 11 proceedings, the debtors and their professionals engaged in a substantial marketing process not to sell these assets but to sell the entirety of the Lehman businesses. When these efforts failed, Lehman sought financial and funding relief from the government, which apparently was denied.

Days prior to the Chapter 11 proceeding, the Federal Reserve took over those negotiations in an attempt to sell Lehman's businesses as a whole, and only two potential acquirers were identified: Bank of America and Barclays. And, unfortunately, for reasons that are not altogether apparent, neither of those institutions were prepared to go forward on a sale for all of Lehman's businesses.

Left with no alternatives and left in a situation where they were desperate for liquidity, the holding company

filed Chapter 11, and so we find ourselves here tonight.

Within two days of that Chapter 11 filing, the debtors filed this approval motion seeking approval of the proposed assets of certain businesses and certain assets of Barclays belonging principally to LBI. And based upon the facts and the testimonies adduced at this hearing, certain things, we believe, are crystal clear. It is undisputed that neither the debtors nor their advisers nor any governmental agency involved attempted to specifically market the assets which are the subject of the approval motion. In fact, when the debtors originally entered into their agreement with Barclays, they contracted away their rights to seek an alternative buyer.

Now, I'm assuming, Your Honor, that it was the determination of the debtors that that fact would not sit well with the Court, that at Wednesday's hearing the Court was advised that, through a negotiation between Barclays and the debtors, that Barclays agreed to drop -- or allowed the debtor to drop that no-shop provision.

But, in our opinion, it references a viewpoint, an indication, a motivation that this transaction that the debtors were trying to accomplish was not necessarily to get the most value, the most appropriate value, to maximize value for creditors, but it was to get this transaction done with Barclays.

Since Wednesday, when the debtors were freed to go out and shop these particular assets -- you've heard Mr. Ridings testify that he took no affirmative steps to do so.

We believe this was a flawed sale process with respect to these assets, a process that appears only to benefit Barclays and the federal government but not the creditors of this estate.

Perhaps as importantly, Your Honor, as I'm sure the Court is aware, the economic landscape seems to have changed over the last two days. Yesterday, the U.S. Treasury and the Federal Reserve Board have begun discussions about a potential bailout of financial institutions by the government agreeing to buy distressed mortgages and distressed real estate assets of these financial institutions. Just the hint of that potential bailout has sent the equity of those financial institutions who would be the beneficiary of that bailout soaring.

And, yet, the debtors and the Fed seem content or determined that nothing get in the way of this transaction. There is no attempt to determine, based upon the latest events, whether Lehman can be a beneficiary of that potential bailout or whether, in fact, as a result of that potential bailout, the assets to be purchased under this transaction haven't increased significantly in value.

And, yet, there has been no renegotiation of a sales price. In fact, there has been a renegotiation of the sales

price. It's been a downward renegotiation, as Mr. Ridings testified with respect to the real estate assets.

There is no final form of agreement to be approved by this Court. We had a forty-minute session with counsel for the debtors where they outlined to the parties in the courtroom suggested changes. There's no writing. There's no opportunity for parties-in-interest to review that. The first amendment, frankly, was just handed out, and that's been around for a couple of days, I'm told.

And, yet -- I'm sorry, since this morning? Apparently they don't know how long it's been around.

THE COURT: Mr. Golden, given the pace of this transaction, days merge for all of us and I don't think that's a fair comment.

MR. GOLDEN: I'm sorry, Your Honor. You know, everybody's frustrated: the parties, the debtors, the governmental agencies, but so, too, are the creditors.

Going forward with this transaction this evening will not allow anybody to assess whether this proposed bailout legislation or any other restructuring alternatives, restructuring alternatives that are very familiar to this Court, such as a debt-for-equity swap of the 150 billion dollars of securities at the holding company, could be a better alternative for the creditors of the holding company.

There has simply been no credible evidence adduced at

this hearing that the price that Barclays is paying for these assets represents fair value. The appraisals are not in evidence. All you've heard is Mr. Miller discuss the contents of the appraisals. There's no other testimony or evidence that suggests the other assets being purchased by Barclays represents fair value or an attempt to maximize value for creditors.

I simply think, Your Honor, for whatever reason, the debtor has failed to meet its burden with respect to the appropriateness of the sale. We have heard the dire consequences as to what will occur or may occur if this transaction is not approved, but we have not heard credible, cogent testimony as to whether the proposed purchase price represents a fair value for these assets.

THE COURT: Mr. Golden, in effect, you're asking me to weigh your speculation against their speculation. What you're asking me to do is to weigh the fact that the markets have turned because of the RTC-type announcement made last night against the palpable, potential, devastating damage to the markets to be caused if this transaction is not approved. You've offered no affirmative evidence. Why should I give any weight whatsoever to your argument?

MR. GOLDEN: Your Honor, I'm not asking you to allow me to superimpose my business judgment versus the debtors' business judgment. But it is not my burden, it is not the

burden of the ad hoc noteholders with respect to this transaction, it is the debtors' burden. And they have not, likewise, adduced any credible evidence as to what will happen if this transaction is not approved this evening.

And, Your Honor, what we think, based upon the facts and circumstances as we understand them, that this situation --

THE COURT: You weren't listening to Mr. Ridings' proffer, apparently. Because in unrebutted testimony he indicated through the proffer that the markets, in effect, would tank. Your cross-examination didn't even touch that subject.

MR. GOLDEN: Your Honor, you're right. We did not cross-examine that. Frankly, I don't believe that Mr. Ridings could credibly testify as to what would happen if these -- if this particular transaction was not consummated this evening.

We think, Your Honor, that what this situation cries out for is a denial without prejudice, but really a brief delay. Not a delay for weeks or months, but a delay so as to determine once and for all, has, in fact, every viable alternative been considered in order to maximize the value for assets.

I said to the Court on Wednesday -- as we sat here on Wednesday and as I sit here this evening, we don't know whether this transaction represents the best viable option for these assets. And we can't know this because we believe there was an

inappropriate and flawed marketing process with respect to these assets.

A brief delay would have several beneficial effects in our view. We'd allow the parties to finally negotiate a final asset purchase agreement --

MR. MILLER: Excuse me, Your Honor. Is Mr. Golden testifying?

THE COURT: I think what Mr. Golden is doing is converting his argument into what amounts to a request that I not approve the transaction this evening so that more time can be spent to evaluate transactional alternatives, or alternatively, to evaluate whether or not this transaction, as it has evolved at the last minute, may, in fact, be the best transaction. That's my interpretation. I don't consider this to be testimony, I consider it to be an argument.

MR. GOLDEN: Thank you, Your Honor.

THE COURT: Have I understood your argument?

MR. GOLDEN: You have, perfectly.

THE COURT: Thank you.

MR. GOLDEN: If we were to have a brief delay, Your Honor, as I said, there would be several benefits that could be achieved. A final form of agreement could be finally agreed to and produced and put into evidence. What's been put into evidence to date is an agreement that's not final with material terms left to be negotiated. So, frankly, I don't know exactly

what the debtors are asking this Court to approve this evening.

We can determine once and for all, is there anybody else prepared to pay more consideration either in dollars or assumption of liabilities with respect to these assets. We can determine whether the federal government is prepared to allow Lehman to be a beneficiary of any proposed bailout legislation.

As I said, Your Honor, it's almost, in our view, impossible for the debtors to have carried a burden with respect to a contract that's not complete.

THE COURT: I'm sorry, Mr. Golden, it's my determination as to whether they've carried the burden. And you're not in the position to say it's almost impossible. So I know it's argument, but don't go there.

MR. GOLDEN: Okay, Your Honor. It's our view that they haven't sustained that burden. I fully well appreciate that that ultimate decision is made by the Court.

Your Honor, it's not a secret here that the bondholders are frustrated by the process. They're frustrated with the lack of clarity with respect to the agreement. They're frustrated by the fact that it changes every few hours. They understand it but they're frustrated by that fact. They're frustrated that they're asking to weigh in on a contract that's not final.

And what the bondholders can't really tolerate is that to the extent that this transaction is approved, the

debtors may believe that they have free license to treat the balance of the assets of this estate in the same cavalier manner. It's not that the bondholders don't understand the pressures, the crushing economic time pressures that the debtors were operating under. But nobody ever reached out to the major creditor constituents. Nobody ever suggested maybe there's an alternative here that is something less than selling assets on what we perceive to be a discount value.

Your Honor, you said on Wednesday that the transaction would be considered up or down this evening. It leaves the bondholders very little choice. They don't like the transaction in its current form, so the natural inclination is to say, as our written objection was styled, that they object to the approval of the transaction. But what the bondholders are really seeking is an opportunity, a very brief opportunity, to vet this process and to ensure that all the alternatives were actually considered, to find out whether there were other possibilities. We have more faith in the Federal Reserve and the Treasury. We don't believe, this is my view, that should this transaction not be approved that the parade of horribles will not fall down on these assets.

So short of asking for an adjournment, which I know that Your Honor was not disposed to consider when we considered the DIP proceeding --

THE COURT: It wasn't that I wasn't disposed to

consider it, I denied it.

MR. GOLDEN: We think the appropriate course of action, Your Honor, is to issue a denial of the motion without prejudice so as to allow the process to unfold in a way that's a little bit more transparent, a little bit more conducive to allow parties -- all parties-in-interest to understand once and for all whether this represents the highest and best value with respect to these transactions. Thank you.

THE COURT: Thank you, Mr. Golden.

MR. NOVIKOFF: Good evening, Your Honor. Howard Novikoff, Wachtell, Lipton, Rosen & Katz on behalf of JPMorgan Chase Bank N.A.

Your Honor, we are not here to urge the Court not to act tonight. We think Your Honor should act tonight. And we appreciate the speed with which the parties have been moving.

We are here and we filed a limited objection because we are concerned that there's a lack of clarity in at least two significant respects and the way that the order affects JPMorgan. And there is one matter not requiring relief of the Court but a matter we do want to bring to the Court's attention.

First, as Your Honor may recall from argument on Tuesday, JPMorgan is Lehman's major clearing bank. In that role, it maintains literally hundreds of clearing, operating, settlement and other accounts. And in that role it makes

advances against securities collateral on a daily basis.

As of this morning, the amount of the advances, Your Honor, was approximately 23.2 billion dollars. Against which, JPMorgan is holding collateral.

In addition, Your Honor, JPMorgan is a major counterparty with Lehman and various types of what we refer to as Safe Harbor transactions, such as security lending arrangements, repurchase agreements, ex-contracts and other similar agreements. And with respect to many of those it also holds collateral and holds setoff rights. And, as Your Honor heard in detail on Tuesday, we have a guarantee from LBHI, which is secured by collateral, which LBHI values at approximately 17.9 billion dollars.

We have heard that as part of the purchased assets, the debtor -- excuse me, Barclays is seeking to purchase 47.4 billion of securities. While we've been given that as a number, we don't know, there's simply a lack of clarity as to whether any of those securities are securities that are held by JPMorgan as collateral as I just described.

A difficulty with the order, Your Honor, if that was the intent, is it does not provide for any payment to JPMorgan for that collateral. And in view of the fact I described collateral -- collateral securing obligations of over forty billion dollars, saying we would have access to a pool of 1.7 billion, along with everybody else chasing that pool, would not

be very satisfactory.

I have sought clarification and I believe obtained clarification from Barclays. That, in fact, they are not seeking or are not treating as purchased assets any of those -- any of the collateral that JPMorgan is holding for that. And I would like that stated on the record, otherwise we need to correct the order.

THE COURT: You're going to have to move to a microphone, and state your name.

MS. GRANFIELD: Good evening. Lindsee Granfield from Cleary, Gottlieb, Steen & Hamilton LLP for Barclays Capital.

It's our understanding that with respect to the purchase assets in this transaction that they do not include the assets that JPMorgan is holding as its collateral.

THE COURT: Is that satisfactory?

MR. NOVIKOFF: I believe she stated it's Cleary Gottlieb's understanding. I'd like to know if that is after consultation with the client.

MS. GRANFIELD: That is.

MR. NOVIKOFF: The second, as I mentioned, Your Honor, that JPMorgan is a major counterparty in various Safe Harbor contracts. The proposed order contains an injunctive provision which affects the debtors' rights in property of the estate. It involves an ability on the part of Barclays to choose contracts in the future for assignment and assumption.

And in the latest version it contains an incomplete protection for Safe Harbor contracts. I would just like a clarification to the effect that -- and I suspect there may be other parties looking for this, that nothing in the proposed sale order affects any right of JPMorgan under or with respect to any securities contract, commodities contract, forward contract, repurchase agreement, swap agreement or master netting agreement, and I use each of those terms as defined in the Bankruptcy Code, Your Honor, to exercise any contractual right. And I use that term as well. Contractual right is defined in the relevant sections of the Bankruptcy Code. Of a kind described in Sections 362(b)(6),(7),(17) or (27), 362(o) and Sections 555, 556, 559, 560, or 561 of the Bankruptcy Code. I've intentionally done it, Your Honor, in that way by making direct reference to the Bankruptcy Code terms. And we were looking just for a clarification and understanding. But that is the effect of the order so as not to affect the Safe Harbor contracts.

THE COURT: We need a clarification, confirmation?

MR. NOVIKOFF: I need confirmation. And that one, I believe I need from both, the debtor and Barclays, Your Honor.

MR. MILLER: Debtor has no objections.

MR. NOVIKOFF: Okay. Now --

THE COURT: Do we have it, I don't think so.

MR. NOVIKOFF: And just to be clear I'm looking for

that as it relates to the proposed sale order. There was an order entered today commencing the SIPC liquidation which had limited effects, and I'm not challenging that. I'm just talking in terms of anything added by the proposed sale order. That does not deal with secured party rights, secured netting rights.

MS. GRANFIELD: Mr. Novikoff had pointed out that the section that had been added to the sale order went through a lot of the Safe Harbor terms. That may be just a mistake, didn't add in every single section of the code that people usually colloquially refer to as the Safe Harbors. So with respect to those few things that weren't added to the order, we recognize that the Safe Harbors exist. And we understand that we are not purchasing the things that are either his collateral or that we can stop the Safe Harbors from being affected.

THE COURT: Let me clarify what you just said because we're talking about the form of order and the impact of the order, if any, on what we were globally talking about the universe at Safe Harbor provisions, as those terms are generally understood in the Bankruptcy Code to deal with repo swaps, forward contracts, securities contracts and the like. And by making the statement that I just made, I am not intending to leave anything out.

I simply want to confirm, as Mr. Novikoff has sought to confirm, that it is intended that those provisions, to the

extent applicable outside of bankruptcy are, in fact, all governing. And that nothing in the sale order is intended to impair, in any respect, those contractual rights.

MS. GRANFIELD: Yes, Your Honor.

THE COURT: Thank you.

MR. NOVIKOFF: Thank you, Your Honor. And then the one point I needed to inform Your Honor concerning -- as I've mentioned, JPMorgan maintains literally hundreds of accounts for Lehman Brothers Inc. And they continue, through the day today, to continue operating those accounts. During the course of the day, it was either Lehman Brothers or the SIPC trustee that, during the course of the day, was the owner of those accounts.

At this point, we are not sure whether Barclays intends to use those accounts on Monday or not. We believe that they will, in fact, need to use those accounts in order to continue their operations. There will be a complication in that when securities and cash hit those accounts on Monday, we are not going to know, unless somebody tells us, whether those securities and cash belong either to Barclays or to the SIPC trustee; that is, are they attributable to assets that have been purchased by Barclay or they have not.

So between now and then we are perfectly willing to work with the SIPC trustee and Barclays to create a protocol so that we can get instructions in how to deal with that, but we

have to get that resolved or we will not be in a position to operate those accounts. Also, Your Honor heard that DTC, the clearing organization, insisted and negotiated heavily during the day and received potentially billions of dollars of collateral to protect it against the possibility of liability, overdrafts, etcetera, with respect to its clearing operations.

In the ordinary course, JPMorgan also picks up those type of obligations. Indeed, last night, picked up -- they had to make a fail advance to allow clearing to go forward of over seven billion dollars. If our accounts are going to be used to effect a smooth transition until Barclays has its accounts set up with another institution, we're going to have to work with them and with SIPC to make sure that -- whether it's a guarantee, an indemnity, or some other procedures are put in place so that JPMorgan is not at risk for providing that transition. Again, we are willing to work with them over the weekend to make sure that works. If, in fact, they have other accounts that they can use on Monday other than ours, we're delighted to do that. But we did want Your Honor to know that that's something that has to be resolved from our perspective, and it is not resolved yet.

THE COURT: Thank you for that. And let me clarify that the statements you've just made with regard to transition issues that are quite significant from the perspective of JPMorgan Chase are not issues that affect the Court, but they

are rather closing issues that must be addressed in order to effect an orderly transition. Correct?

MR. NOVIKOFF: That's correct, Your Honor. We are not seeking relief from the Court on those issues, but if we fail to reach agreement I did not want JPMorgan's credibility, or, frankly, my firm's credibility, to be affected because we didn't let you know that those issues existed.

THE COURT: Thank you.

MR. NOVIKOFF: Thank you.

THE COURT: Mr. Sabin?

MR. SABIN: Your Honor, I know the hour is late. I'll be very brief. There is but one issue remaining, I believe, that is not yet resolved and it arises in connection with that part of this transcript, if you will, when it becomes a transcript, that otherwise was raised in ours, and that is related to the small amount, allegedly, of IP assets that do not belong to any of the debtors that we do not believe this Court has jurisdiction to sell free and clear. So assuming we can solve it by drafting in the order, and assuming that's acceptable to the debtors and purchaser, hopefully we could schedule those assets, we could define them in the appropriate places, carve them out from the relief otherwise with respect to the balance of the purchase assets, which are assets of the debtors. If that can be done then the entirety of our concerns and our limited objection of the Harbinger funds would be

resolved.

THE COURT: All right. I hear that argument, and I don't know if anybody on the debtors' side, as a matter of law or as a matter of structure, would argue that notwithstanding what Mr. Sabin has said it may be possible for those IP assets to be transferred free and clear. I'll be the first to admit that I don't know, based on this record, anything about where the IP resides. And my best recollection of the statements made by Lori Fife is that she wasn't so sure where, within the corporate structure, those assets reside. So based on the record, I think it would be hard to override Mr. Sabin's concern, but I'm not eliminating the possibility that the debtor could make such an argument, and it sounds like it's a drafting issue.

MS. GRANFIELD: Your Honor, it's not a drafting issue, quite.

THE COURT: You're going to have to talk by a microphone.

MS. GRANFIELD: I'm sorry.

THE COURT: Then you're going to have to make an argument --

MS. GRANFIELD: No, I understand, Your Honor.

THE COURT: -- as to how, as a matter of bankruptcy law, assets that are not residing within this debtor or its property-owning affiliate can be the subject of a free and

clear order.

MS. GRANFIELD: No, I understand. I understand the argument and Your Honor's view. Obviously, a few things in terms of our ability to schedule those assets -- it may be drafting and you're right. We can see on a recess or as we're trying to do an order, whether we can come to agreement or not. But to say that we don't want to be put into a position of the proverbial death by a thousand cuts, where Barclays --

THE COURT: I think I'm in that position right now.

MS. GRANFIELD: -- you know, where Barclays obviously has made a tremendous effort in trying to get to a position to be able to close this transaction, so we'll see, Your Honor. But I just wanted to not be too quick, and I understand the legal argument and Your Honor's view -- but too quick that it's just a drafting --

THE COURT: If you want to think about an argument that would permit this Court to convey nondebtor property free and clear, I'm certainly receptive to creativity. But I think that at this hour, it may really be a drafting issue or an issue of risk assessment.

MS. GRANFIELD: No, I think it's the latter. So we'd have to -- it's really just having the ability to talk to the client. And we'll have to make a decision in terms of, obviously, the deal was we're buying the assets free and clear. But we'll leave that to the recess.

THE COURT: Well, I think it was Mr. Miller who mentioned that 10:45 was a witching hour. And I haven't heard all the objectors. So absent a miracle, I think it's going to be hard to make that deadline.

MR. MILLER: I didn't understand that PWC was objecting, Your Honor. I thought we went through that earlier today.

MR. FLICS: Your Honor, Martin Flics of Linklaters for the administrators. Just as Mr. Novikoff and some others have had some important clarifying points, we do as well. And, in fact, the first point may relate to the very last point that was just addressed. These businesses have, for many years, operated as one. And what is being proposed tonight is something very ambitious. And as we've indicated, we do not oppose it. But it is very ambitious. It is the complete separation of these businesses that have operated as one.

The asset purchase documents, as we have pointed out in our response and in the declaration, do not do a perfect job of effecting that separation. There are a number of issues that need to be addressed. Those issues are important not only to the European entities, but as we've heard in the last round of discussion, they're probably important to the debtors as well, in effecting the sale. For example, there is intellectual property and IT all over the enterprise that is shared. Some of that intellectual property is owned by

European entities and is used by the American entities.

That intellectual property surely cannot be transferred tonight. Those entities and administration surely cannot have their property compelled to be transferred. I assume no one would dispute that. On the other hand, equally, there are assets owned by the U.S. entities that are used in the European business. There are client contracts that are shared. There are source codes that are shared. There are issues of confidentiality and access to source code. There's various ownership rights in the IT and in the process.

There are a lot of issues that are very important to both sides. These issues have not yet been addressed. And they need to be addressed. During the course of the last couple of days, we have communicated a number of the points to Weil Gotshal and to the debtor. We have made our points in our responsive pleading. We understand that some of them may have been addressed in the proposed amendment, but we don't know. We understand that others have not, but we don't know which have been and which have not been.

We are prepared to accept a representation and confirmation that all of the issues that we have set forth in our response and in our declaration will be negotiated in good faith, expeditiously. As I said, they're very important to the administrators, and we think they're also important to the estate. There are issues of our access to books and records

that we think we have a reasonable right, not to mention a statutory obligation, to review, and all of the proprietary information that is shared across the IT and intellectual platforms. So as to the first of the two issues that I wanted to address this evening, I would like to know -- we're not going to negotiate those standing here, for sure.

THE COURT: Certainly not in my presence.

MR. FLICS: And I'm certainly not capable of doing so. But we have had representations informally from people in the course of this evening that they are prepared to do so. We will accept that representation as a means of going forward with the --

THE COURT: Are you also reserving rights in respect to that representation?

MR. FLICS: -- we are absolutely reserving rights in the event that we are not able to achieve a satisfactory resolution on the issues that we have put of record.

THE COURT: Do I understand that your principal concern relates to the very same intellectual property rights that we were talking about moments ago, or is it different?

MR. FLICS: Actually, I have no idea. All I know is that they have mentioned cryptically intellectual property of nondebtor, and there is some issue about its ability to be transferred. That happens to be an issue because I know that the European entities hold some intellectual property that is

used by the American entities. I have no idea if that's the particular point they were raising. Perhaps it's some other nondebtor entity. I can only speak to the administrators and their estates. I would like to get that confirmation on the record so that we could proceed.

MR. MILLER: We'll negotiate in good faith.

MR. FLICS: Okay. And we reserve our rights in the event that we cannot reach a satisfactory resolution. The second issue is an issue that you have heard something about this evening and in the course of the press, which is the so-called eight billion dollars that is owed to Lehman Brothers International Europe. I will not spend more than a minute on the substance of that issue.

For parties that care to understand what the administrators' current state of knowledge is on that, they can refer to our pleadings. As I said, we have a declaration of one of the administrators which describes their understanding of the state of affairs at this time. I think I should emphasize what should be obvious to all, which is that it is a point of substantial interest and concern to the administrators. This is not the only forum in which people have been working day and night. In fact, the administrators were strangers to Lehman Brothers until Monday morning and they have, in the course of just the last few days with a team of literally hundreds of people, tried to understand this business

in the very course of the business being split and to fulfill their obligations as administrators.

One of those obligations is clearly to determine their rights in respect of these claims. We want to be certain that the entry of this order in no way prejudices the rights of the administrators to pursue their rights and claims against the debtors or third parties. We recognize, before people jump up, that it does limit our rights against the purchaser. But as to everyone else in the world, it should not be impairing our rights in any way to seek and pursue our rights and claims against those parties.

I did note earlier in the evening, a matter that makes the issue easier for us with respect to the purchaser, and I know that this is good news/bad news, which is that no cash was being transferred to the purchaser. To the extent that there were substantial amounts, that might have raised some issue as to what the source of it was. But since there is not, that is probably not an issue for the purchaser. But we just want to be very clear that if anyone believes that in the course of this sale, this sale order, that somehow there's an intention to limit our ability to pursue, investigate and assert these claims, I'd ask them to say so, because I do not believe that they do.

THE COURT: You seem to be asking for somebody to speak up. It's almost like a wedding.

MR. MILLER: Well, I guess sales are like weddings.

MR. MILLER: If there's somebody that represents the rest of the world, Your Honor, I wish he would speak up.

MR. FLICS: Okay. Well, hearing nothing --

THE COURT: I hear no one disagreeing with your assertion, and I trust that the order is not intended to cut off rights against any parties other than Barclays.

MR. FLICS: Thank you, Your Honor.

MR. BIENENSTOCK: Good evening, Your Honor. Martin Bienenstock, Dewey LeBoeuf, for the Walt Disney Company. Due to the hour, etcetera, I can say that the issues I'm about to address briefly boil down to two provisions in this order, which can be dealt with either by -- if the Court cares to interpret them in a way that I'll submit makes them legal or by interlineation.

The premise of the remarks is basically that even when parties get together to do God's work and do God's work, when it's human beings doing it, they may also do some other things that are illegal. And it's not at all surprising, based on Mr. McDade's testimony, that when he sat at the table he was sitting there as the representative of LBHI and LBI. It's not at all surprising that the interests of subsidiaries of those and those creditors of those subsidiaries were not represented. And as we all know, in a commercial sense, the easiest thing to do when two parties are negotiating what seems like a zero-sum

game, is to say the third party will pay extra money or incur extra liability. And that's what we think has happened here.

And Your Honor, I hope, will note I'm not asking for the Court to agree to some argument of exercising discretion in one way or another. I'm only bringing to the Court's attention that which I think the Court is compelled to do based on whether something is legal or illegal. And we just have to rely on the Court that even when parties are doing God's work, the law is the law and it needs to be carried out. So what am I referring to specifically?

You can tell that none of the subsidiaries or their creditors were represented here by the very fact that the entire purchase price is payable to the three entities, the LBI, LBHI and the LB 745 LLC. We have testimony, as Mr. McDade admitted on cross, that that long list of businesses, everything in North America, foreign exchange, etcetera, is being transferred. The asset purchase agreement says it's being transferred. Those are the businesses that the subsidiaries conduct. What the asset purchase agreement does, in our view, and Your Honor doesn't have to decide this, is sub silentio. It transfers the business of the subsidiaries: the foreign exchange business, the Walt Disney Company, trades with and Lehman Brothers Commercial Corp. But it doesn't get part of the purchase price here.

Its employees are leaving, the infrastructure is

leaving. Everything important is leaving. He admitted it is being wound down. It'll have to be. No one's left to really run it for a profit. But they don't get part of the purchase price. Now this, frankly, I don't think should even be objectionable to the debtors or doesn't affect Barclays. I don't know how the committee will come out. But if paragraph 4 on page 12 of the proposed order, which is the free and clear paragraph --

THE COURT: Well, you know, the only person in this room who seems not to have the proposed order is me, Harvey.

MR. BIENENSTOCK: The judge needs an order.

THE COURT: Where are we looking?

MR. BIENENSTOCK: Paragraph 12 -- I'm sorry, paragraph 4 on page 12, carrying on to page 13. It's a somewhat boilerplate provision providing that interest, which is broadly defined to include claims interest and a thousand other things in the assets transferred, will attach to the proceeds. Now, what's happening here is in the asset purchase agreement they're transferring the employees, the infrastructure, ultimately the business of the subsidiaries, without having the subsidiaries a party, simply by virtue of the fact that technically the employees work for LBI or LBHI, etcetera.

To give the subsidiaries a fair shake here, all really that needs to happen is the Court can say the

subsidiaries can submit their claims to their share of the sale proceeds to the extent they show that they had value, they in essence were being sold, and they'll get whatever the Court determines they're supposed to get when it allocates a purchase price someday. And since the estate has billions of dollars of real estate, it will be selling later, which we'll part see at this purchase price, it shouldn't be hard to accommodate that. That's one thing. It's both required -- otherwise, you have subsidiaries losing all value with no compensation, and it also shows the mental -- the dynamics at work, which as I said before was two parties get together; the easiest thing to make a deal is to take from a third party. The other provision --

THE COURT: It may be that they're not being -- nobody's taking any -- it might be that it's not taking as much as collateral damage; that the consequence of selling the platform is to indirectly erode value within the subsidiaries that you're talking about. You have the advantage of perhaps having some understanding of the corporate structure of Lehman. There is nothing that has been presented to me since Monday of this week, when I first became actively acquainted with this case, that has instructed me on a corporate structure of the various entities that you are referencing. I know about LBHI. I know about LBI. I now know about the European entity. And this is a learning process for probably all of us. And it's happening in a hurry.

If what we're talking about is crafting consensual language that's acceptable to the debtor and also acceptable to the purchaser, that modifies the free and clear paragraph to give you what amounts to a reserved right to make a claim on behalf of your client -- I don't know how you do that, actually -- to an allocated portion of an unallocated purchase price. I think it may be an invitation to future disaster. But that's just me, late in the evening, processing what you said.

MR. BIENENSTOCK: No, Your Honor, I might have been misunderstood because I submit it's simpler than that. This paragraph 4 already allows everyone with any type of interest in the proceeds to -- it automatically attaches the interest in the assets to the sale proceeds. All I'm saying is the Court can solve this problem by saying the subsidiaries can assert their interest in this -- that this paragraph, as drafted, will also allow the subsidiaries to assert whatever interest they have. If Your Honor's theory is right, they may have zero interest. But they can assert their interest --

THE COURT: It wasn't a theory. It was just a musing.

MR. BIENENSTOCK: Pardon me?

THE COURT: I was just thinking about the consequences of what you said in light of what was in the order. And I may have unduly complicated it. But I think the

only thing, then, that's being requested by Mr. Bienenstock as to this paragraph is that the debtor agree, if willing to do so, that certain unnamed subsidiaries -- or maybe we need to name them -- will have at least the ability to assert an interest in proceeds, whatever that might be.

MR. BIENENSTOCK: That's right.

THE COURT: Mr. Miller?

MR. MILLER: As I understand Mr. Bienenstock, Your Honor, all he wants to do is have a right to file a claim against the proceeds. Is that correct?

MR. BIENENSTOCK: Well, for the subsidiaries to have the right -- it's their proceeds.

MR. MILLER: Without conceding that there's any claim whatsoever, or that his theory on businesses being sold has any validity whatsoever, I don't see that there's any restriction in this order against anybody filing a claim against those proceeds.

THE COURT: Is that a yes or a no, Mr. Miller?

MR. MILLER: That's a yes, Your Honor.

THE COURT: Okay.

MR. MILLER: But it doesn't affect the purchaser, Your Honor. It's just the proceeds of the sale. And the subsidiaries he's talking about, Your Honor, are subsidiaries of LBI. And, therefore, he's really talking about the allocated 250 million dollars that goes to LBI, which is in a

SIPC proceeding.

MR. BIENENSTOCK: Your Honor, the answer was yes, and I can move on.

THE COURT: I'm glad I asked that question.

MR. MILLER: I just hope that Mr. Bienenstock and his client understand that.

MR. BIENENSTOCK: Your Honor, the other provision which is -- well, at least as important, if not more so, is in paragraph 10 on page 15 of the proposed order. There's language about free and clear and successor liability all through this order. Except in paragraph 10, the language is fairly good at saying that -- at protecting Barclays from successor liability for any claims against the debtors, which is conventional, and that's what we're all accustomed to. Now, whether you can have a free and clear order that applies to successor liability is an issue in itself. Only one or two circuits have spoken on it. But that's not for tonight.

But generally, in the order, the successor liability is spoken about as successor liability for claims against the debtors. In this paragraph, in paragraph 10 -- page 15, paragraph 10, section C -- the order, or the proposed order, provides that the purchaser and its affiliates, etcetera, shall not have successor liability as a continuation of substantial continuation of the debtors -- fair enough -- or any enterprise of the debtors. If that is interpreted to mean divisions of

the debtors but not subsidiaries, I don't have a problem. And then my client would not be enjoined pursuant to the paragraph on -- there is a paragraph in here enjoining parties against bringing claims that you're not supposed to bring or that are sold free and clear.

But if "or any enterprise of the debtors" is interpreted as subsidiaries of the debtors, then we run into the issue that Your Honor started to discuss earlier. What is the authority for a creditor of a nondebtor to be told that its business was transferred free and clear of liens, claims, interest, successor liability? Now, if Mr. Miller is right, or his suggestion turns out to be true of a possibility that the businesses of the subsidiaries were not transferred, fine, then presumably the action may not be meritorious unless there's another good theory. And there are other theories besides successor liability.

But, again, we're not asking Your Honor, and it's not before Your Honor tonight to decide whether creditors of the nondebtor subsidiaries who have causes of action as a result of this have meritorious ones or not. I'm here on the black-letter law, for all the reasons in our objection, which I will spare Your Honor and not repeat, because I know you read them, however quickly. I know Your Honor understood them. We think they're compelling and ironclad. But I'm not going to repeat them. For all those reasons, we don't think this language, "or

any enterprise of the debtors", can be interpreted to mean subsidiaries of the debtors within the contours of the law. Cannot do, this was overreaching, if that's what this means. And this can be fixed either by striking the words "or any enterprise of the debtors", or simply Your Honor saying -- Your Honor issues this order, even though the drafting was proposed by others, saying when you sign this you don't intend that enterprise means subsidiaries of the debtors. It's as simple as that.

THE COURT: I'm going to give others an opportunity to comment on this point, because I know from experience that the no successor liability provision is more often than not of extraordinary importance to the purchaser. And if the purchaser is willing, through counsel, to confirm that "or any enterprise of the debtor" is as that term is used in paragraph 10(c) of the order, is not intended to extend to any subsidiary of the debtors, that confirmation or an edit that's consistent with that confirmation would seem to satisfy you. Correct?

MR. BIENENSTOCK: Yes. I just have to say, and I apologize for the repetition, that this is where we just have to rely on the Court. Of course, a purchaser will want all the protection it can get. This -- regardless of its desire -- I mean, if I'm the purchaser, why wouldn't I say no, I want that to mean subsidiary. Of course I would say that.

THE COURT: No, the problem with --

MR. BIENENSTOCK: But it's illegal.

THE COURT: -- I don't want, at the moment, without hearing from purchasers' counsel, to start to comment on my interpretation of this language at this hour. But I could do so. And I don't want to do that without knowing what position the purchaser takes with respect to it. I'm offering that up as an opportunity. Otherwise, I may say some things that you might not want to hear.

MR. BIENENSTOCK: Thank you.

MS. GRANFIELD: Good evening, again, Your Honor. Lindsee Granfield, Cleary, Gottlieb, Steen & Hamilton, LLP, on behalf of Barclays Capital. The problem -- I have no problem with Mr. Bienenstock's first point, but the coupling of the two do cause a problem because, essentially, I see the parties to the asset purchase agreement are the debtors. Those parties, up until the time that the trustee came in, controlled their subsidiaries. These are, I think, all wholly owned subsidiaries or for the most part wholly owned subsidiaries. The trustee came in, exercising his control in terms of his business judgment to exercise his control here.

With respect to claims that in their exercising their control over the subsidiaries that there should be an allocation of the purchase price with respect to what's happening here, you know, obviously, I agree with Mr. Bienenstock, that doesn't affect the purchaser, and so we have

no objection to it. But if he's saying he wants his cake and he wants to eat it too, which is he wants to make claims against the proceeds, like everyone's just agreed, and now he wants to keep open the ability not just to question the business judgment of the controlling parties of the subsidiaries in entering into the transaction, but he wants to leave Barclays open. Barclays is making this transaction possible to claims by subsidiary creditors that Barclays is a successor and Barclays, after having had to renegotiate this deal many times over the last few days, lost the 700 million dollars in cash it was originally going to receive, lost other benefits under the deal. No, we can't agree to that. And I would have to go talk to my clients about how strongly we feel about that. But if it were up to me, that would be it. That would be the final cut.

THE COURT: Okay. Now, I know what you think.

UNIDENTIFIED SPEAKER: Your Honor, you ready for the next objector or --

THE COURT: Well, we sort of have a pregnant pause here. This is an unresolved issue, and I don't mean to diminish the significance of it by describing it as a drafting point because it's not. The problem with the language as it's presently drafted is that it's wildly ambiguous. The term enterprise is not defined. And in common parlance it could include joint ventures, other business activities. It's not

limited to nor does it address subsidiaries, it's actually far broader. And I suppose it was made as broad as it was made deliberately.

I don't know what the term is intended to convey in terms of its meaning. Nor do I believe, based upon my looking at it for the first time and not hearing any discussion as to what was the intent in the drafting of it, that I'm in a position now to do what Mr. Bienenstock has asked me to do, which is to do God's work.

I believe that if it's left as it is, without further definition, that we'll be revisiting this another day. And I certainly don't want to invite further potentially burdensome litigation over the point. Nor do I have any idea as to whether or not what we're talking about is a theoretical discussion, which I'm happy to engage in at any hour, or a practical discussion involving meaningful rights of Walt Disney Company. Based upon the pleadings filed by Mr. Bienenstock on behalf of his client who is still objecting and the questioning that he has presented of witnesses this evening, it's apparent that he is doing what he can do to protect claims against an identified counterparty. I don't know what those claims are at the moment in terms of their net value, and I don't need to know.

For purposes of this order, however, I'm going to need to look at it very carefully because this is one

highlighted example of provisions in a sale order that I had not had a chance to review, partly because it's now 10:33 and because I haven't had a chance yet to review the order although I promise I will do so as expeditiously as I can and given the fact that there is an objector waiting in the wings -- actually, it is a wing over there, we're not getting this done before 10:45. That's apparent. I'm going to make the following suggestion, and I'm not trying to delay anything. I'm going to hear all the objections this evening. I'm going to hear the debtors' response to those objections, and I think that Mr. Miller, or any other member of his team that he designates, is entitled to speak to the Court while all of this is fresh. But it's also clear to me that assuming I rule, and I'm going to rule one way or the other this evening, in favor of the transaction and an order needs to be entered, I think that everybody should be spending a little bit more time than we have this evening since it's no longer critical in terms of timing to make sure that language issues, such as the issue identified by Mr. Bienenstock, are addressed to the satisfaction of everyone involved in the transaction.

I have reserved, just in case it might be needed, this courtroom for tomorrow morning at 10 a.m. I'm not suggesting that it's going to be necessary for anybody to come back. But in the same way that parties mentioned to me that 10:45 this evening was a time that I might take into

consideration, I wanted you to know that I didn't have any idea one way or the other as to how long this hearing would last or how much time would be required to address the many objections that float in, particularly at the last minute. So to the extent that it's not critically important to the transaction that an order be entered this evening, I'm going to suggest that time be spent to make sure that it's right and that I've had a chance to consider it fully so it can be entered tomorrow morning, assuming that I approve the transaction. That's my comment with respect to this language point. Mr. Rosner?

MR. ROSNER: Thank you, Your Honor.

MS. GRANFIELD: I apologize, Your Honor. I apologize to Mr. Rosner.

THE COURT: Once again, for record purposes, I just think you're too far away from the mike unless you speak at the podium.

MS. GRANFIELD: I apologize, Your Honor, and I apologize to counsel. Just --

THE COURT: This is Lindsee Granfield speaking on behalf of Barclays.

MS. GRANFIELD: Lindsee Granfield speaking on behalf of Barclays. I wanted to -- just because obviously we did not have an opportunity to respond in writing to the different arguments or Mr. Bienenstock's writing just if I may, or if it's all right with Your Honor, I'd like to cite and I'd like

to hand up to Your Honor the order authorizing a similar transaction in the Refco Chapter 7 case where exactly the same language on successor liability was used, if that is permissible?

THE COURT: It's permissible but it's completely unnecessary.

MS. GRANFIELD: Okay.

THE COURT: And I suggest that whatever language appears in any other order is of no significance to me. Just because something was entered in another case because it wasn't picked up by a parting interest who was concerned about it does not, to me, influence this outcome.

MS. GRANFIELD: Very well, Your Honor.

MR. ROSNER: Thank you, Your Honor. David Rosner, Kasowitz, Benson, Torres & Friedman on behalf of the Bay Harbor Entities. And to state something obvious, there's clearly some momentum behind this takeover of this company and we recognize that. And we recognize that in making our objection, and we recognize that there are some very important human elements to the transaction that I know in the dollars and cents world of bankruptcy sometimes people do lose sight of and I think that on all sides here nobody has lost sight of them and I think that they are important.

One of the main arguments, and I understood Mr. Golden when he said it and I thought it was right even

though it may not be the most appealing thing to say but it is right that this global markets argument is not really directly on point as to what is being done in front of Your Honor in terms of this estate and what is happening to creditors. Though I understand that the Court does take a macro view of certain things, but one of the arguments in favor is that getting this deal done will build confidence in the market and that's kind of just been taken as a given, almost, by many of the parties here. People can look at the way this transaction actually got created and determine whether Barclays' behavior, whether the position that Lehman found itself in, whether that is market confidence building or if that is detrimental to the market, nobody really knows. And as I think we've seen over the last couple of weeks, nobody really knows a lot about when people make moves -- people in positions of power make moves that they think are going to stabilize. Perhaps they are really unstabilizing. But what you're being asked for here to do today is to be a federal court granting its imprimatur on a transaction where we know -- and the PWC as the administration of a U.K. entity has submitted a declaration that eight billion dollars was transferred from the U.K. entity into the United States rendering that entity unable to trade, delisted, insolvent and that money disappeared and that money is gone. And by money, I mean money and securities. Now, I will respectfully disagree with you, Your Honor, on some things that

you have said and we have heard tonight. Unquestionably, you wear the robe and this is your courtroom and you make the call.

THE COURT: No, this is our courtroom. It's not my courtroom. This is the people's courtroom, but I'm not Judge Wapner.

MR. ROSNER: Clearly, Your Honor. Clearly.

THE COURT: This is -- I'm serious about this. I feel very strongly that we're here for a public purpose and my name just happens to be on the door.

MR. ROSNER: I appreciate that, Your Honor, very much. And what I will say is that I do respectfully disagree with Your Honor as to whether this process comports with due process as it's understood under the Bankruptcy Code and as it's understood under the Constitution. It's an important point. It is one that has been discussed tonight to some degree but it is one that Your Honor did speak to quite directly earlier, and I took those points and I just want to state for the record that our view is that the eight billion dollars has not been investigated. Nobody knows how that happened. Nobody knows who knew about that transfer. Nobody knows whether -- and by nobody here in our people's court, I'm including Your Honor as saying nobody knows that, because Your Honor certainly doesn't know because no one has been able to present evidence to Your Honor as to who was involved in the transfer and --

THE COURT: I'm having a problem with this argument right now, so you might as well know it rather than continue it. I don't understand the relevance of this. I understand that it's a big number, it's a huge number. And I understand that you've asked questions of Mr. McDade about his knowledge of the transaction, and he didn't provide a lot of information. And I paid attention to the fact that he didn't provide a lot of information. But it made no impact on me because I'm confident I'm going to learn a lot about this in the course of this case. The question that I have for you, and you're pressing this point now, is what does this have to do with whether or not it is in the best interest of this estate to approve this particular transaction which is the only available transaction tonight? What does this have to do with what we're here to consider?

MR. ROSNER: What it has to do with, Your Honor, is akin to what you were talking about, about the terms of the order, is that if you approve this sale and if you permit an order to be entered like this sale order then all those securities that were transferred from the U.K. to the U.S. are now going to be transferred to Barclays and that will be it. And anybody's rights --

THE COURT: I thought this was a cash sweep. Is this a securities sweep?

MR. ROSNER: As I understood, there are going to be

securities. I heard tens of -- millions of -- billions of dollars of securities that are going to be transferred pursuant to this transaction.

THE COURT: Well, there's actually --

MR. ROSNER: And cash, but --

THE COURT: -- there's absolutely nothing in the record, Mr. Rosner, about even what we're talking about. This is a reference to news articles that appeared, speculation in the press. Having read some articles about myself lately, I know that there are a lot of things in the press that are just plain wrong. And I've always known that.

MR. ROSNER: You have a declaration --

THE COURT: My apologies to any members of the press who may be watching this or listening in. The reason I make this point is that just because there is scuttlebutt about something doesn't mean it's properly before me. And it's a huge amount of money, and it's a matter of great significance and I'm confident that it will be addressed. But I thought I heard someone say earlier that there's no intention, as a result of this transaction, to affect what rights may exist with respect to that transfer.

MR. ROSNER: Well, except -- and if that's the case Your Honor, and if --

THE COURT: Did I mishear that?

MR. ROSNER: Well --

THE COURT: I may have.

MR. ROSNER: Except, I think, that the purchaser is seeking to cut off any rights for people to trace their property to the purchaser. That's the whole point of tonight's proceeding is for the purchaser to be able to say it is taking assets that were in our view and in the view of PWC, who did submit a declaration to Your Honor. This is not a newspaper story; it is a declaration that states that in just a few days the joint administrators have identified more than eight billion such funds that are due to LBIE but that LBIE does not hold. It's not a newspaper article. The administrators know what they're -- excuse me.

MR. MILLER: Your Honor, it's pure speculation as to what was transferred, if there was a transfer. There's nothing in the record on this at all.

MR. ROSNER: That's the point. There's nothing in the record --

THE COURT: I think we all agree. There's nothing on the record on this point.

MR. ROSNER: But that's a critical omission on the debtors' part because what the debtor is seeking to do is if you look at the sale order what the debtor is seeking to do is to have Your Honor find that the debtors had good title to these assets. Not they have the right, title and interest to these assets, that they have good title to these assets and

that upon the sale to Barclays, Barclays will have good title to these assets. And those are findings that this Court can't make because there has been no evidence that has been introduced by the debtors. There's been no record made by the debtors that these assets that are being transferred are not the assets that were transferred by LBIE. The debtor has chosen not to put on that case and has not put on any evidence to demonstrate that it has title to the purchased assets.

Now, you did say just a moment ago, Your Honor, and I listened to you out in the wing, that the order's going to need some study? And everybody's going to need to take a look and study? But that is a critical point of this order because to say that the debtor has to have this Court make a finding that the debtor has good title in the face of the knowledge that there was a transaction of this magnitude, and what we're talking about is customer property. Customer property, the people who broker dealt -- who prime broker dealt with LBI and whose property was then moved to the U.K. and then that property disappeared and it disappeared, we believe, through a transfer on Friday and no replenishment. And that, we believe, is the very same property that is being sold. But the order that you're being asked to enter is to say they have good title today. Well, they don't have good title today. They can't prove that they have good title today and they certainly haven't tried to prove that they have good title today. And

what we've said, Your Honor, is that we have -- we own our property. It is -- I think Mr. Bienenstock made this point when we were dealing with subsidiaries and I believe counsel for Barclays said at some point it was going to come up with an argument and Your Honor said it better be a pretty darn good argument but that a debtor can't sell what it doesn't own. We own our property. If our property was transferred without our consent into LBI, even with our consent, it's still our property and they don't have good title and they can't sell it. So our liability -- Barclays has to remain liable to return our property or to honor our constructive trust. And that's why it's highly relevant to these proceedings, Your Honor.

THE COURT: Has there been any attempt, prior to your articulation of this argument this evening, to determine the willingness of the parties to this transaction to reserve with respect to this claim for repatriation of the funds that were transferred on the Friday before the Monday of the filing?

MR. ROSNER: We put that in our papers as the alternative to denial of the sale because it's always good to have a second option on the denial that we sought. But in fairness, I think that we have not had that discussion. There was a meeting at Weil, I spoke with Ms. Fife yesterday; I had actually sent her an e-mail and sent an e-mail to another person. I wasn't here on Wednesday, but I understood that they had said partners would be available 24/7. I reached out to

say can we have a discussion. I was advised to come to Weil at 3:00, which I did. And I listened to the presentation and I asked my questions. And the answers I got were I don't know. And I don't mean that disrespectfully or disparagingly but no, the answer is no. We would reserve for our property. I will tell you that, Your Honor. We would take our property and we would reserve for it and say let's make sure that we have a full and good claim to the ability to recover our property since it was taken from LBIE and transferred into this estate and is now being sold.

I get back to your point, Your Honor, and not to beat it again, there's a lot of things -- the Bankruptcy Code is a very powerful document. It gives us the ability to come into court just a few days after a filing of Lehman's size and seek to sell pieces of the company that Mr. Flics says it doesn't even own pieces of the company. The Bankruptcy Code gives us that but it doesn't give us the right to sell what it doesn't own. A debtor cannot do that. 363 says property of the estate. It doesn't say whatever property it wants to. It can't sell my -- well, it can't sell my client's property, it can't sell my property either but it can't sell my client's property.

THE COURT: I guess I'm having a problem with what you're saying. I've heard you say it, and I think you've almost said it enough because I know your argument. But

because this isn't in the record, this is just argument, and because the Lehman Enterprise transferred routinely cash and other securities in staggering amounts clearing from one continent to another all the time, and we're dealing with issues relating to separate estates, one in the U.K. and this one here, and including SIPC estate we have two, I don't know whose property this is.

MR. ROSNER: Exactly.

THE COURT: And it may not be the estate that you're asserting it belongs to. It may not belong to the administrators. All you're doing is asserting on behalf of your client a claim derivative of the claim that the administrators would make. And you know what? I don't know if it's right. So because we are approaching 11:00 at night and dealing with no evidence with respect to the underlying premise of your argument I think it's time to move on.

MR. ROSNER: Fair enough, Your Honor. I'll just close off that piece and I will move on to the next argument is that your last statement that we don't know is the statement that I believe is correct. And when you talked about the transfers around Lehman, which I don't think was actually testified to but when you spoke of that, I'm still talking about customer property. I'm talking about our property. No matter how many times it gets moved, it's still our property and it can't be sold.

THE COURT: Excuse me a second. If you're talking about customer property you represent a particular fund or a family of funds --

MR. ROSNER: Yes.

THE COURT: -- and segregate accounts and that kind of thing. Yes?

MR. ROSNER: Well, yes, except that the property was moved out, yes.

THE COURT: And how much are we talking about in the case of your client? It's not eight billion dollars.

MR. ROSNER: No, unfortunately for them it's not -- fortunately, it's not eight billion dollars but it's a very sizable figure that I'm --

THE COURT: What are we talking about?

MR. ROSNER: It's actually something I'd prefer to tell Your Honor in chambers as opposed to make a public statement on the number. But I would say --

THE COURT: Here we go again with hedge funds not wanting to talk out loud.

MR. ROSNER: I didn't say they were hedge funds, you said funds.

THE COURT: I don't know if they're hedge funds or not.

MR. ROSNER: Thank you.

THE COURT: I'm just reminded of the old 2019 issues.

MR. ROSNER: Me too.

THE COURT: I understand your argument. And your argument is fundamentally we need to look more closely at the order so that you can protect the interest of your clients, and I agree you should.

MR. ROSNER: There's another part of this record that hasn't been made. In the overall point here that I think we kind of talked about in somewhat of a generality is that they have the burden of proof here. The burden of proof on each element. You did talk about evidence that was given, evidence that wasn't and there was some cross-examination. But the debtors have the burden of proof of demonstrating each of the elements that they need to demonstrate. And they didn't put a record on regarding the good faith purchaser findings that they are seeking to have found by Your Honor.

THE COURT: Oh, I totally disagree.

MR. ROSNER: Well --

THE COURT: I totally disagree. One of the things that I try to do, I may not succeed perfectly, but I try to listen with great care to the evidence that's being put into the record to support findings, and I heard ample evidence both in the McDade and in the Ridings proffer that would support good faith findings here. This was an arm's length transaction, negotiated aggressively' it arose in two stages after the deal fell apart. At the end of the weekend they

restarted it, it was brisk, everybody was concerned about the markets, this is all going at a breakneck speed but in terms of good faith, everything that I heard was indicative of arm's length, good faith, aggressive negotiations. And, in fact, what occurred this evening in court with respect to the fair value of the real estate is a further concrete example of that negotiation. So I reject completely the assertion you've just made.

MR. ROSNER: Then I'm going to leave that one alone, Your Honor.

THE COURT: I think that's a good idea.

MR. ROSNER: There are some other problems in the order and I appreciate that you said that we have to look carefully at it. But there is one that I want to point out to Your Honor and then talk about the alternative that we were talking about just a moment ago. And I don't know if this was simply a drafting point, but it does seem -- didn't write the paragraph number, the word "interest" -- Mr. Bienenstock mentioned that the word "interest" is a defined term in here and it includes all claims. But then the order itself actually releases the debtor from all interests and I don't know if that was the intention of the order. I'll get to it in a minute. It's in paragraph -- it was in paragraph 24 --

(Off the record)

MR. ROSNER: Okay. I'm sorry. It's actually

paragraph 8. Thank you. Is this something revised or -- this is the revised one?

UNIDENTIFIED SPEAKER: That's the one I handed up this evening. I need that back.

MR. ROSNER: Okay. It's in paragraph 8 called Release of Interests. And it said "that the order shall be effective as a determination on the closing date all interests of any kind or nature whatsoever existing as to the debtors for the purchased assets have been unconditionally released, discharged, and terminated". And since interest includes all claims and, as we said earlier, includes everything under the world, this would actually constitute a general release to the debtors. And I don't think -- I'm hoping that that's not what was intended, but it is what it says.

THE COURT: Well, here's what I think, and I understand the point and you've made it and I think it needs to be addressed.

MR. ROSNER: Thank you, Your Honor.

THE COURT: But I'm not ruling on it at this moment. I believe that what this is about is a drafting point. And I don't think that this courtroom should be converted into a late night session in somebody's law firm. This is a hearing to approve a sale or deny approval of a sale. We've already reserved on the question of the form of the order and I've made it clear that I have as a fallback, if people can't agree, that

we can have a further hearing to flush out ongoing issues concerning the form of the order tomorrow morning at 10 a.m. I intend to be here. And anybody's who's interested can show up.

MR. ROSNER: Got it, Your Honor. I'll close with just saying, and maybe I'm stating the obvious, I hope not, but I recognize that it's a lot to do. It's a lot to ask this Court to do that which is in the face of the massive pressure that is being brought to bear on this transaction to say no, I'm not going to approve it or no, I'm actually going to adjourn it to allow people to take some reasonable amounts of discovery investigation to learn if there are facts that should be presented to the Court which we haven't been able to present to the Court because there hasn't been an ability to do that. I recognize that that's a huge burden to be placed on the Court and that's why you wear the robe in the people's court and we don't and we don't have to make that tough call. And people have said that this transaction is unprecedential and I think that's right. But unprecedential transactions lead to bad precedence as well. And I would just ask -- urge Your Honor to consider what's before you, consider the interests of the creditors, all the arguments that have been made and I hope that you will either deny approval of the sale, adjourn it for some brief period of time or in our case, allow for a set aside so that we can preserve our interests as to specific property. Thank you, Your Honor.

THE COURT: Thanks, Mr. Rosner. Is there someone else who wishes to be heard?

MR. LEMAY: Your Honor, my name is David Lemay from Chadbourne & Parke and I won't consume more than about three minutes of the Court's time. I, too, am part of the LBIE posse and I rise only to suggest what I think could be a very modest change. My client, Amber Capital Management, does not seek to have liabilities foisted on the transferee. We know that's not really something that's ever going to happen. We don't seek to stop the sale. Indeed, our client thinks that it's fine that the sale goes ahead. We have a couple of drafting issues on the order. I think what I've heard is I should stow those for now and talk about them with counsel.

THE COURT: Yes.

MR. LEMAY: I'll do that, of course. One thought that I had, though, Your Honor, that would go a long way to placating the LBIE constituency, would be since there are these arguments and yes, at this point there's no record to support them one way or the other about who owns the assets that are being transferred, one classic way that courts deal with that, of course, is to just make sure that the proceeds -- the proceeds that the debtors receive, both the SIPA debtor and the Chapter 11 debtor, are put in a safe place where you can make those decisions later on. So I am going to simply suggest to Your Honor that I think the LBIE constituency would be very

well served, and no one else would be prejudiced, by adding a minor substantive in the future and that's simply if the sale price is effectively the escrow subject to further order of this Court. As I say, I've got drafting issues; I'll take those up later and that's really it for me, Your Honor. Thank you very much.

THE COURT: Thank you, Mr. Lemay. Just so I get a sense of how many people who are standing are standing waiting to speak? One, two, three, four? Okay.

MR. TALMADGE: Your Honor, I'll be extremely brief. Scott Talmadge from Kaye Scholer for Wells Fargo. We had filed a brief objection. It raises the same points that Mr. Sabin had raised with respect to the nondebtor subsidiary's assets. And we believe that that can be resolved by a drafting in the order, but we'll have to see what happens with respect to that. That's all I'm going to say because we might be here a while.

THE COURT: Thank you.

MR. FLANIGAN: Your Honor, my name is Dan Flanigan and I represent BATS Holding, Inc. I'll not only be brief but I'll talk as fast as I can.

THE COURT: Don't do that because we won't understand you.

MR. FLANIGAN: All I'm seeking, Your Honor, is confirmation on the record of what I think I heard off the record at the earlier presentation and that is that none of the

stock owned by the debtor in BATS Holding, Inc. is going to be sold to Barclays in this transaction. Thank you.

THE COURT: That has been confirmed. Okay. Next.

MR. GREGOR: Good evening, Your Honor. Michael Gregor of Allen Matkins Leck Gamble Mallory & Natsis on behalf of Constellation Place, LLC as well as SunGard Expert Solutions, LLC and certain affiliated entities that are affiliated with SunGard as reflected in the opposition that we filed today. Your Honor, initially, I have not yet filed a property application. I request authority to --

THE COURT: I'm hearing you now. It's fine.

MR. GREGOR: Thank your, Your Honor. Very quickly, with respect to Constellation, Your Honor, my client is a landlord of the Los Angeles premises that are going to be assumed. Section 8.14 of the APA provides that immediately upon assumption there will be a sublease back and the point that we have is simply that while the code allows for an assumption and an assignment, there's no right to compel a sublease back once the assignment occurs. And any -- our point is simply that any subleasing should occur in certain forms with the terms and conditions of the lease, whatever those terms are.

The second point, Your Honor, is with respect to the terms of the assumption. The APA provides that Barclays will only be responsible for post-closing obligations under the

leases, not pre-closing, and while normally defaults are taken care of with a cure, and it shouldn't be an issue with landlords in particular, it does create an issue because there are obligations relating the pre-closing period such as CAM reconciliations, indemnity obligations and otherwise that may arise post-closing but relate to pre-closing activities that no one knew about prior to the closing. And our position, Your Honor, is simply that in connection with the lease assumption, Barclays should be required to assume the obligations as -- all the benefits and burdens of the lease, not pick and choose, just the post-closing liabilities with respect to our leaseholds.

Moving on, Your Honor, with respect to SunGard, SunGard has approximately forty agreements with some of these debtors. It has not had the opportunity to review which agreements are being proposed to be assumed and assigned.

THE COURT: I'm confused about something. As to these agreements, are these agreements that are closing date agreements or designated agreements to be --

MR. GREGOR: The debtors --

THE COURT: -- selected within the next sixty days?

MR. GREGOR: The debtors' notice of assumption designated approximately forty-two of the SunGard agreements for closing date contracts.

THE COURT: Okay.

MR. GREGOR: And the point here is simply that we haven't had a chance to review our objections with respect to those. There may be issues pertaining to whether or not the debtor entities are the parties to this contract. It may be nondebtor affiliates that are the parties to the contracts as well because the contracts relate to IP; they may be nonassignable under nonapplicable bankruptcy -- under applicable nonbankruptcy law. And we reserve our rights to raise any of those objections.

THE COURT: All right. Your rights are reserved.

MR. POURAKIS: Constantine Pourakis of Stevens & Lee on behalf of 1301 Properties, LLP, the owners of the 1301 Avenue of the Americas building. Just a couple of questions. Our understanding is that the assignment will not be taking place tonight but the assumption will. We just want to know if the order will provide -- there will be a provision saying that the assumption of the contracts is effective as of today.

MR. MILLER: The transaction is approved by the board.

MR. POURAKIS: Okay. Second, in our objection we just stated that the debtor failed to provide any proof of adequate insurance due to performance. Is there going to be any kind of reserve for unpaid rent obligations?

THE COURT: I'm sorry, what did you say?

MR. MILLER: Adequate assurance, Your Honor.

THE COURT: Adequate assurance of future performance?

MR. POURAKIS: Yes, Your Honor.

THE COURT: Is the Barclays?

MR. POURAKIS: Well, we understand this is not Barclays PLC. We understand it's a subsidiary. We're not sure who the actual entity is who's buying this asset.

THE COURT: Well, this is the first challenge I've heard to the financial wherewithal of Barclays, and I'm intrigued by your position. I'm not sure what you're looking for.

MR. POURAKIS: When we filed the papers we still weren't clear as to who was the proper entity. How these -- our client was; it was not so that's why we raised that objection -- our objection. We just wanted to make sure.

THE COURT: Well, my suggestion is that at some point we're going to take a break and that you have a conversation to adequately assure yourself that things are fine. And if you're not, we can revisit it.

MR. POURAKIS: We're fine with that, Your Honor.

THE COURT: Okay.

MR. POURAKIS: Thank you.

MR. KADEN: Excuse me, Your Honor.

THE COURT: Who are you?

MR. KADEN: I'm a disembodied voice. Greg Kaden of Goulston & Storrs. I understand from the debtor that the

objectors who are on the phone were muted for a while and I just wanted to make sure that we weren't forgotten about; that at least one objector, myself, on behalf of two clients, has objections to raise as well. And I don't mean to take my turn out of order, but I can't see what's going on in the courtroom and I just wanted to make sure that in the late hour people didn't start filing out of the courtroom and have us be left on mute on the --

THE COURT: Well, you did a very graceful job of jumping the line. We're not going to let you --

MR. KADEN: I apologize, again, for the interruption, Your Honor.

THE COURT: Okay. What I'll do is when people in the courtroom have finished their presentations I'll give you a signal and you can express your position for your clients.

MR. KADEN: I appreciate that, Your Honor. If I could indulge one further request relating to my handicap of being outside the courtroom. Is there some way that the debtors could either have their claims agent call us or e-mail to the service list the proposed form of order that's being discussed?

THE COURT: It's a reasonable request for those who are actively engaged in this hearing remotely and judging from the nods that I see at counsel table for the debtors, that will be done. I just don't know when it will be done but it will be

done.

MR. KADEN: Okay. Thank you, Your Honor.

MR. ELROD: Thank you, Your Honor. David Elrod on behalf of TransCanada Pipelines and its affiliates. We filed a limited objection and I think that it has been essentially in part resolved by statements that occurred when the Court left the courtroom and we had an update by counsel for the debtor on what's not included in the sale. And I just wanted to make that clarified on the record, Your Honor, because it hasn't been confirmed yet. It's our understanding that Lehman Brothers Commodity Services, Inc., Eagle Energy Partners, ULC and Eagle Energy Partners I, L.P. assets are not part of this transaction, this purchase agreement, and that the transaction will not affect their ability to operate as an entity.

THE COURT: It was hours ago that I heard that but I believe that to be true. Ms. Fife, is that true?

MS. FIFE: Yes it is, Your Honor.

MR. ELROD: Thank you, Your Honor.

THE COURT: Okay.

MR. ANGELICH: Good evening, Your Honor. George Angelich of Arent Fox, counsel to the Vanguard Group, Inc. The mutual fund so many Americans, millions of them, indeed, trust their money with Vanguard. And, Your Honor, people are in a panic mode in America and not acting rationally on many fronts in the economy. And I think, Your Honor, the global economy

argument that you've heard tonight as a rationale for speeding this process up and taking the expedited approach that's been taken and utilized by this Court, it needs to be responded to one more time.

Your Honor's discretion in judgment is really the only counterbalance at the moment and waiting and giving a little additional time to this process and allowing the debtor the opportunity to go out and market these assets for perhaps an additional period of time, just two weeks, might engage a competitive process because Barclays is probably not going away. They're getting a fire-sale deal here for these assets and I think that approving a deal in the middle of the night will not do much to assure the markets of an improvement to the economy, it may actually have the opposite effect. So, Your Honor, we would ask that you --

THE COURT: Could you explain how approving this transaction could possibly have a negative effect on the markets?

MR. ANGELICH: Well, Your Honor, there could be a negative impact because there could, in fact, be additional value that could be realized through a competitive fitting process. If there are indeed -- if there's no one else out there --

THE COURT: I don't think you've answered my question. You've made the assertion that you thought that my

putting this off is somehow a plus for the markets? Was that your assertion?

MR. ANGELICH: Indeed, Your Honor. It may very well be. This week we've seen an improvement in the markets. There has been an opportunity for stabilization for --

THE COURT: I'm sorry, but I've been down this road with other arguments in terms of relative speculation and I think I addressed it with Mr. Golden when he was pressing me hard on that very same point. So I've heard it, and I will consider it.

MR. ANGELICH: Thank you, Your Honor.

THE COURT: Is there anyone else in the courtroom who wishes to be heard? All right. We go to the telephone list and I'm not sure how many people who are participating by phone are objectors. Please identify yourself and speak up.

MR. KADEN: Good evening, Your Honor. It's Greg Kaden at Goulston & Storrs on behalf of two clients, Interactive Data Corporation and 125 High Street, L.P., each of which filed an objection. I'll start with Interactive Data Corporation.

Some of my objections have been -- or reservations of rights, so to speak, have been raised already so I'll try to make it brief and hopefully incorporate the concessions that have been made in response to those similar objections.

Interactive Data Corporation, to begin with, along

with its affiliates, provide data and related services to the debtors and their affiliates, pursuant to a global services agreement. The global services agreement sets forth universal terms and conditions for the specific projects that Interactive undertakes for the debtors and affiliates. Now, those specific projects are governed by other agreements called schedules. But the schedule is subject to all of the terms and conditions of the global services agreement.

Now Interactive compared -- in the limited time that we have, compared the agreements that the debtors proposed to assume and assign against its own books and records but simply has not been able to determine, with any certainty, which agreements the debtors intend to assume and assign.

With that said, we would first ask that the debtors and Barclay work with Interactive to determine which contracts are being assumed and assigned. I believe that the parties have already undertaken to do that, but given that I've been a little bit handicapped on the phone, I just want to make sure that we have confirmation of that for the record.

MR. MILLER: Yes, sir.

THE COURT: I don't know if you heard Mr. Miller but I believe he confirmed it.

MR. KADEN: Okay. Is that the case?

THE COURT: Yes, that is the case.

MR. KADEN: All right. Moving on then, Interactive

believes that the global services agreement must be assumed and assigned together with any schedule that Barclay is purchasing. That's because they're interrelated and we think that the global services agreement provides the master terms and conditions for the schedules. It actually got intertwined with the schedules. So we respectfully request either that the parties agree to that proposition on the record, namely that the schedules can't be assumed without the global services agreement also being assumed. Or if we can't get that granular at this point, simply confirmation of the issue can be tabled for purposes of today's hearing, without prejudice to Interactive's right to raise the issue post-closing.

THE COURT: Is there anybody here in a position to comment with regard to that statement?

MR. MILLER: Not the debtors, Your Honor.

MS. GRANFIELD: Lindsee Granfield, Cleary Gottlieb Steen & Hamilton, LLP on behalf of Barclays Capital. I think we indicated to the Courtroom, when Your Honor was out of the courtroom, that in working through the issues of the assumed contracts, that we would seek to resolve those issues. The contracts that are the closing contracts, we are asking Your Honor to find are assumed because with respect to many of them they are needed to operate. For instance, the Lehman space on Seventh Avenue and the trading floors there, and other infrastructure in many, many different places. And therefore

not to have -- or to have some cloud would be a problem.

But having said that, in terms of trying to work out with the counterparties to assume contracts, are there issues about identification? Is there an issue that -- what's the full contract? We obviously realize we have to live within the bounds of 365 in terms of assuming a full contract, can't break up the contract, have to pay the cure cost. Plus, in terms of any accrued amounts, when we assume the contract, even if accrued amounts aren't due yet but then the due date comes up, that's going to be for our account. So that's pretty much the comfort I can give at this time.

THE COURT: You don't have to agree that's sufficient but that's all you're getting.

MR. KADEN: Pardon me, Your Honor.

THE COURT: I said, you don't have to agree right now that that's sufficient but I've heard what she said and I think that's all you're getting in court this evening. Is that satisfactory?

MR. KADEN: I guess it's not satisfactory to the extent that these documents are -- the two agreements are physically separate documents. So, to the extent we're talking about assuming all the benefits of one contract, if we can agree that it's one contract, then of course we have no objection. But we just don't know whether the debtors or the Barclays will have an issue that these are, in fact, separate

contracts and they don't actually go hand in glove together as part of the assumption and the assignment.

So I guess it could be a moot point that we can't even tell whether it's in on the list. For all we know the master agreement already is on the list. But I guess, to the extent I popped a hole into the current circumstances, I would like to reserve the right to raise the argument, with respect to the global services agreement, that that also must come along with any assumption and assignment of the schedules.

To the extent that we can't consensually agree or indeed to the extent that the global services agreement isn't already sitting on the schedules to be assumed and assigned or a different name that we simply just can't identify for our books and records.

THE COURT: I'm not sure how to say goodbye but I think we're done with what you had to say. I didn't mean to make light of what you said, it's just that you're on the phone and nobody said anything and I think we're done with what you had to say. Anything more?

MR. KADEN: I'll move on, then. Finally, although Interactive has determined the cure amount under its contract to, at least the amount scheduled by the debtors, which is 596,792 dollars and, I guess, six cents. We think it may be more. However, since the debtors have already scheduled 596K as an undisputed cure amount, we'd have to immediately pay this

as an undisputed cure without prejudice to Interactive's right to argue after discussion. Hopefully we can reach a consensual resolution but they will argue, post-closing, that additional cure is required. And I want to make sure that that argument is reserved under Mr. Miller's general postponement of cure objections but also to clarify that any undisputed cure amount, if we agree, as we believed in the 596,000 dollars will be immediately paid as part of the closing.

THE COURT: I'm not going to say anything in response to that. Whoever wants to respond, please do?

MS. GRANFIELD: Lindsee Granfield, Cleary Gottlieb for Barclays Capital. The proposed order is providing that to the extent -- well, that the cure amounts will be paid as soon as practicable on the earlier of the consent of the party to the cure amount on the schedule, the deemed consent of the party because they don't object on October 3rd or after your Court's determination of the cure amount after dispute.

So no, we can't agree that again another party wants to have its cake and eat it too, that if there's a dispute about the amount we either reach agreement, get paid as soon as practicable or Your Honor will determine it.

THE COURT: That sounds perfectly consistent with due process and I think everybody can agree that that's so, even this briefly into the case. There'll be an opportunity to be paid an amount that you agree. If you don't object you'll get

the deemed amount and if there's a problem there'll be a hearing.

MR. KADEN: Fair enough, Your Honor. Thank you.

If I can move on now to my second client, which is 125 High Street.

THE COURT: What time zone are you in?

MR. KADEN: What time zone?

THE COURT: Yes.

MR. KADEN: I'm in the Eastern Time Zone.

THE COURT: Okay. Well, then you know how late it is. I wish you'd expedite -- I don't mean anything by this but we've really been going for a long time. It's a very, very hot courtroom and we have a tremendous amount of work to do before we can all go to sleep. So I really ask you to limit your remarks if you can.

MR. KADEN: Okay, I will. I'll get to the main issues and many of them have already been raised. So I will try to be as brief as possible and I apologize and I appreciate the Court's indulgence.

I would like the same confirmation that the prior landlord has asked for, that the rights of my landlord at 125 High, under the lease, with respect to any sublease back to the debtors are preserved consistent with the terms of the lease.

I think it was already confirmed on the record for the other landlord but I want to make sure that that same

confirmation as to that the lease says what it says with respect to treatment of subleases and that there's no attempt here being made to overrun the provisions of the lease with respect to subleasing, if there is a sublease contemplated on this matter.

MS. GRANFIELD: With all due respect to counsel, I have no idea what your lease says or what its terms are. And so I can't confirm to you anything at this moment. But I can confirm that we'll have to live with what 365 gives us in terms of rights. That's all I can give you at this moment.

MR. KADEN: Fair enough.

THE COURT: Does that do it?

MR. KADEN: The same confirmation as to year-end reconciliations with respect to 125 High, if the year interrupts, to the extent that they're payable under the lease, that those provisions will be honored as well?

THE COURT: Counsel, let me tell you what I think is happening here, and you can't see what's going on in the courtroom, which puts you at a disadvantage. You're doing a really effective job of being tenacious and pressing your points but I don't think you're winning them. I think that all you're doing is getting reservations of rights, which is about as much as you can expect at this hour.

And I'm also going to acknowledge, both to you and to everybody in the courtroom that I'm getting tired. I've been

on the bench for a long time and I've been trying to concentrate in a very important hearing and I think we have to stop talking about these issues.

MR. KADEN: Fair enough, Your Honor. I apologize.

THE COURT: There's no reason to apologize. This is an important hearing and you have clients to represent. I'm just telling you that if you were watching what's going on you would realize that you're losing me. I can't pay attention to what you're saying and I'm trying to.

MR. KADEN: Okay. So then with that I will take your cue and close my arguments there.

THE COURT: Thank you.

MR. HAYES: Your Honor, one more telephone objection that'll take about thirty seconds.

THE COURT: Where are you?

MR. HAYES: My name is Dion Hayes, I'm with McGuireWoods. I represent Toronto Dominion Bank, also Eastern Time Zone.

THE COURT: Are you in New York City?

MR. HAYES: No, sir.

THE COURT: Okay, then I'll listen to you.

MR. HAYES: We have significant claims, Your Honor, against Holdings LBI and certain LBI subsidiaries. We filed, essentially, a joinder in Mr. Bienenstock's objection that he filed on behalf of RBS. We join in his comments that he

articulated earlier with respect to paragraphs 4 and 10 of the order. I haven't seen the order unfortunately but as it was described in the hearing earlier, we share his objections to those provisions. Thank you, Judge.

THE COURT: Okay. Thank you.

MR. ROESCHENTHALER: Your Honor, this is Mike Roeschenthaler, also for McGuireWoods in the Eastern Time Zone. I represent Access Data Corp and CNX Gas Company. Briefly, Your Honor, Access Data Corp, based on the representations made by counsel for the debtor about asserting late claims or rejection of claims, at this point we're fine with that, subject to our right to assert those claims because we -- the claim of Access Data is about ten times what has been listed by the debtor.

And for CNX Gas Company, our claim related to EU Energy and based on representations by the debtor earlier, that is no longer part of the sale. If that's the case, then we have no objection to the sale going forward.

THE COURT: Thank you.

MR. ROESCHENTHALER: Thank you, Your Honor.

THE COURT: Is there anyone else on the phone? Okay. Then you can mute your lines.

It's now 11:30 and what I said I meant, I'm kind of exhausted. But I think that it's also important for us to get through this. I recognize that many of the people who are

sitting out there have not eaten and haven't had a break in a while and I think due process also includes no cruel and inhuman punishment. And so I think that it may be timely, before I hear from the debtors and/or also from the purchaser, to take a fifteen minute break so everybody can refresh themselves a little bit.

So since it's already as late as it is, it might as well be a little bit later and let's take a fifteen minute break and I'll see you at 11:45.

(Recess from 11:30 till 11:45 p.m.)

THE COURT: Be seated, please. Mr. Miller?

MR. MILLER: Good evening again, Your Honor. And given the lateness of the hour, Your Honor, I expect to be exceedingly brief, Your Honor. There have been an awful lot of objectors who have stood at the lectern and it's, sort of, hard after listening to twenty odd people, to remember all of the comments that were made and objections that were made. But there's one basic theme, Your Honor, that has gone through the statements by Mr. Golden, Mr. Rosner and some others. That apparently there is the ability to stop everything, take two or three weeks or maybe two or three months, while we explore every possible alternative. And there is no recognition, Your Honor, that we have a patient that is hemorrhaging on the operating table and there is no intensive care ward for this patient.

Things have happened, Your Honor, in the last two days. First of all, we have a SIPC proceeding, Your Honor. A trustee has been appointed for SIPC and the assets of LBI are under the jurisdiction of that proceeding. They're gone, Your Honor. And as it was pointed out in the testimony today, there are 639,000 accounts with a value of something like 138 billion dollars that are sitting now waiting transfer. And if this sale doesn't go through, Your Honor, those accounts are going to be stuck. And they're going to be stuck for months and months.

Mr. Golden says that he protects the interest of creditors. I would say, Your Honor, the debtor is protecting the interest of creditors. If this transaction doesn't go through, Your Honor, LBI is out of business. It already is -- will be in a SIPC liquidation proceeding.

There is no money at LBHI. The DIP loan will become due, 200 million dollars, as payable. Look what happened yesterday, Your Honor. The CME closed us out and we took a loss of one billion, six hundred million dollars. This administration is finished if this transaction is not completed, Your Honor.

It's a shame, Your Honor, that the 7,000 people who are waiting for transfers today in various computer points throughout the country, did not get what they expected to. And I'm not being critical of anybody, Your Honor; everybody has a

right to express their views. But we are in a situation in which we have a fragile asset that can't. This is not a case where you can sit and go out and explore every single opportunity. And in that connection I might say, Your Honor, that for months, certainly going back to the collapse of Bear Sterns and before that, Lehman has been deleveraging. It has been participating in every effort to deleverage its balance sheet.

It got down to -- let me call it the final round, where there only were two possibilities: the Bank of America and Barclays. And the Bank of America went off and did something else. Barclays -- that transaction was unable to be consummated. So in the exercise of good business judgment, management and the board of directors turned to get the best transactions they could get in the limited time.

And, Your Honor, there aren't many candidates that could do this. You needed somebody with the kind of capital, credit standing of Barclays. There aren't that many people out there. And you can't go around and cherry pick these assets, Your Honor. This is an integrated operation.

So what is happening, Your Honor, we are protecting the customers. There's testimony on the record, Your Honor, as to what the consequences would be if this transaction doesn't go forward. Both Mr. Ridings and Mr. McDade have indicated there won't be anybody in the building. If there's no

assurance of an ongoing operation for the LBI employees, which are most of the employees in 745 Seventh Avenue, they're not going to stay there, Your Honor. These are people who have bills that they have to meet, they need employment. They need some element of certainty. They're all expecting, and I'm not putting any pressure on Your Honor, they're all expecting that Your Honor will rule --

THE COURT: The pressure is already there, Mr. Miller.

MR. MILLER: I'm sorry?

THE COURT: The pressure is already there.

MR. MILLER: Thank you, Your Honor.

THE COURT: Not from you.

MR. MILLER: No, no. I was looking for that woman. There is pressure on everybody, Your Honor. I mean, I was just saying to somebody, here we are sitting in a courtroom at 5 minutes after 12, and we've been here for a long time, and that is evidence of the concern that everybody has. And I understand the issues, Your Honor. As we said on the very first day, this is an extraordinarily exceptional case. There is so much at stake here. And if we miss this opportunity we are talking about a wholesale liquidation with all of the consequences that come out of that liquidation. And people can speculate as to what's going to happen.

I mean, I was a little shocked at Vanguard, who

happens to be a competitor of Neuberger, saying don't close this. It'll be a good thing for the marketplace, for somebody maybe. So I think that argument, Your Honor, just doesn't carry water.

Now I would turn, just for a minute, Your Honor, to the LBIE thing, which is confusing this whole matter. I point out, Your Honor, LBIE went into administration before the Chapter 11 case was filed. And PWC froze all transactions immediately and it became the administrator. So those transactions were frozen.

Now, what we're talking about, Your Honor, is eight billion or five billion, whatever it might be, Your Honor, that was a cash sweep. Cash, we're not transferring any cash to Barclays, that's out of the agreement. So if Mr. Rosner or somebody else has a claim, they can assert a claim. It has nothing to do with this transaction.

And I would also point out, Your Honor, that PWC as the administrator is not opposing the sale. In fact, they're supporting the sale. They're just reserving their rights and they should reserve their rights. If they have a claim, this is all going to be investigated. But we have to look at the bigger picture, Your Honor, what happens if we don't close this transaction. And Mr. Ridings testified, Mr. McDade testified as to the consequences that will affect these estates. We cannot reverse what has already happened.

And in the short period from Wednesday to Friday, notwithstanding that Your Honor approved the sale procedures, we lost the confidence of the market. And if you don't approve this transaction, Your Honor, LBI is finished as an operating business. It will not add any value to anybody. And all we will have left, Your Honor, is a winding down estate and holdings. And if that building is empty, Your Honor, it won't be worth 900 million dollars because that's the nature -- that appraisal that we got assumed a value with the building in use.

So the dangers here, Your Honor, are extraordinary. This is a good transaction, Your Honor. We spent a lot of time listening to landlords. All of those issues, Your Honor, are minor and will be resolved in one way or the other. Either Your honor will decide them or there will be mutual arrangements and agreements among the parties.

The drafting of the order, I think, Your Honor, if we all sit down in good faith we will come up with an order. I think we will come up with an order tonight if Your Honor were to approve this transaction.

THE COURT: I'm prepared to stay here for as long as it takes if you're prepared to stay here for as long as it takes.

MR. MILLER: Your Honor, I can't think of a better place to be.

THE COURT: Do you want to order pizza? How do you

want to nourish yourself between now and the entry of the order?

MR. MILLER: With pepperoni?

THE COURT: Whatever you want.

MR. MILLER: I agree with Mr. Bienenstock -- maybe let me rethink that. Your Honor, I would stay without food. I think that's a good thing. And I would lock all of the latrines. I'm sorry; I withdraw that remark, Your Honor.

THE COURT: Unfortunately, it's on the record of this proceeding.

MR. MILLER: And, Your Honor, the proceeds of the sale, the 250 million dollars, is going to the SIPC trustee, the one billion 290 million dollars is going to the estate. There is a creditors' committee. Those proceeds are safe. Hopefully, we're going to go into the more conventional procedures of Chapter 11.

I don't want to use the melting ice cube. It's already half melted, Your Honor. The steps have had happened, the things that have happened since Wednesday, make it imperative that this sale be approved. In the interest of all of the stakeholders, including Mr. Golden's clients, they will benefit by this, Your Honor, because if the alternative happens, there will be very little to distribute to creditors, if anything.

So we submit to Your Honor that this sale should be

approved and should be approved tonight. And we should get the orders entered and get the transfers done before there's any other prejudice and harm. Thank you, Your Honor.

THE COURT: Thank you, Mr. Miller.

MS. GRANFIELD: Really brief, Your Honor, because I won't tread over any ground that Mr. Miller just went over. The importance, if Your Honor is so disposed to approve the transaction of staying here, getting the order done and getting it entered tonight, my client wanted me to express to you the importance is really not only in terms of the operations, the moving of the money, the preserving of the value for this estate, but the importance in terms of staying here and get it done tonight is really with respect to the employees who we've already heard many times have really had a horrible week. They have had a bit of hope in terms of being able to return to a more business as usual. And we're really concerned if they don't wake up tomorrow and see that not only has it been approved but the order's been entered and we're moving forward towards closing.

Just generally, with respect to the objections, Barclays Capital cannot pay out the sums that have been put on the record tonight and subject itself to collateral attack. It's not doing this transaction to paint a bullseye on its back for every subsidiary creditor, landlord, fund that wants to figure out who's a deep pocket, oh, Barclays is doing this deal

so it's one of the three or four deep pockets that could have and so we're going to reward by miring it in collateral litigation. If there's really any chance of that, it won't happen. And this will all be for naught. So we do have to keep our eye on that ball.

And then finally, Your Honor, in the proffer of some of the testimony tonight, and this had been said before, and it may have been the belief of the parties who had said it, but it's important with respect to Barclays and its relationship with regulators in the U.K. that we wanted to make a pointed statement that it has not only been the U.S. regulators that have really gone above and beyond to try and facilitate this transaction. But the regulators in the United Kingdom have done so as well. And there was speculation, really, that maybe the U.K. regulators had some to do with not having the prior transaction that was worked on last week come to fruition. And it turns out that's not the case. It really was not a regulatory issue but just a question of the structure of the transaction would have required Barclays to have a shareholder's vote in order to do the transaction and that just was not going to happen with the precipitous terrible things that were happening at the time. And so, we just wanted to correct the record with respect to that. And with that, I'll turn it over to others.

MR. BIENENSTOCK: May I respond for a moment, Your

Honor?

THE COURT: Yes, you may.

MR. BIENENSTOCK: I just want to point out that, number one, we all understand the importance of the transaction. And it's very easy for a party sponsoring it to say, and I won't do it unless you give me something illegal, so give it to me, Judge. I'd like to point Your Honor to some evidence Your Honor admitted, the contract. Nowhere in that contract does it say they need an order that's free and clear of successor liability from creditors of non-debtor subsidiaries. Nowhere. This is just overreaching and gambling that Your Honor feels this is so important that you'll do something illegal so they'll close tonight. Thanks.

THE COURT: It's my job to do what the law permits in the exercise of my discretion. This week, more than any other week since I was appointed to the bench, I have felt the awesome power of this job. And it's now Saturday morning. I've given a lot of thought the objections. I reviewed each one that I could get. They were flying in this afternoon one after another. And I categorized them in my mind and considered carefully whether it was permissible for me as a judge in this district to approve a transaction this momentous on such an extraordinarily fast schedule. And I gave consideration to the due process considerations that have been articulated in objections both orally and in writing. And I

have concluded that this is really not a question of due process being denied. This is a question of due process being pursued in good faith by all parties to the transaction, even the objectors. It is a testament to the importance of this transaction that this courtroom is still packed. I have no idea what's going on in the overflow rooms. This is not an ordinary Chapter 11 case.

This is not simply approving the transaction because Mr. Miller is putting pressure on me to do so. This is not approving the transaction because I know it's the best available transaction. I have to approve this transaction because it's the only available transaction.

I believe that one of the remarkable aspects of our Bankruptcy Code, as it has evolved, is its remarkable flexibility to different circumstances. The lawyers who are appearing before me this evening are truly among the best and the brightest in the field. And some have participated in the evolution of bankruptcy as a field, nationally and internationally. We must close this deal this weekend not because the markets demand it, although that's certainly a part of it. Lehman Brothers became a victim. In effect, the only true icon to fall in the tsunami that has befallen the credit markets. And it saddens me. I feel that I have a responsibility to all the creditors, to all of the employees, to all of the customers and to all of you. Arguments have been

made this evening by objectors, some questioning whether or not if I were to delay approval another better transaction might be realized or discovered. And that's a preposterous notion. As I said on Wednesday, it's very apparent to me that for a transaction of this sort to happen, only Barclays can do it. Only Barclays has the support of the regulators. Only Barclays is prepared to close. Only Barclays can deliver the customer accounts to safe harbors. And the customer property, which is the principal concern of the SIPC trustee, a case which is also pending before me now, will be best protected by virtue of approving the sale.

The objectors, and I'm not putting them all in the same basket, principally, Mr. Golden and Mr. Rosner's clients, argue passionately that I should not be unduly influenced by the arguments made by the debtors that the markets will, in fact, tank if this deal is not approved and that more time should be afforded to searching for an alternative. I am persuaded that to do so would be reckless. I believe that the debtors have acted in the utmost of good faith in trying to make the best out of a terrible situation. The comments made by the SIPC trustee so many hours ago in reference to the cooperation, the unusual cooperation that has characterized the commencement of the SIPC proceeding and the coordination of that proceeding with this bankruptcy case demonstrate not just that New York lawyers and consultants can be good citizens but

that we all recognize that we're engaged in something here that's very special. This is the most momentous bankruptcy hearing I've ever sat through either as a lawyer or as a judge. And I'm guessing I'm not alone in that sense.

One could be a theoretical bankruptcy jurist and say transactions such as this should always be subject to more time so that parties can better assess the consequences of the transactions. Bankruptcy Rule 6003 which was enacted recently was designed among other things to slow down activities in the first twenty days of big bankruptcy cases. This is Friday. This case was filed on Monday. What we're doing is unheard of but imperative.

I am completely satisfied that I am fulfilling my duty as a United States bankruptcy judge in approving this transaction and in finding that there is no better or alternative transaction for these assets, that the consequences of not approving a transaction could prove to be truly disastrous. And those adverse consequences are meaningful to me as I exercise this discretion. The harm to the debtor, its estates, the customers, creditors, generally, the national economy and the global economy could prove to be incalculable.

Moreover, it's not just about avoiding harm. Approving the transaction secures whether for ninety days or for a lifelong career employment for 9,000 employees at Lehman, and holds together an operation the value of which is really

embedded in the talent of the employees, their knowledge, their relationship, their expertise and their ability to create value to the economy.

Earlier today, I guess it was yesterday, I said that I was concerned about the real estate value in this transaction. I still am but I'm getting over it. I believe that sophisticated negotiations cannot be parsed neatly into the constituent parts because they're integrated and interrelated in the result of give and take. I'm unable to value a piece of New York City real estate and there's been no real evidence presented although the appraisal has been alluded to. I suppose it is theoretically possible that if the office building at 745 Seventh Avenue were subject to marketing and auction procedures over a lengthy period of time and were somehow viewed as a quasi trophy property that perhaps it might bring more value. But that's speculation. As to the data centers, I have no idea. I'm not even sure I know what a data center. I expect it's a place that has servers and deals with the back office needs of a large operation such as this. And that, in a sense, describes part of the problem for me as a judge here. I know that I need to approve this transaction. I am absolutely confident in my judgment. But I also know that this is so exceptional relative to the experience that I have had both as bankruptcy lawyer and as judge to know that it could never be deemed a precedent for future cases unless

someone could argue that there is a similar emergency. It's hard for me to imagine a similar emergency.

And so, as to those objectors who say it would be establishing bad precedent to approve this transaction, I say no. This is not a bad precedent. To the contrary. It's an extraordinary example of the flexibility that bankruptcy affords under circumstances such as this. It's an example that creative minds working diligently day and night even under the worst of circumstances can create remarkably complicated transactions that preserve value. I am proud to have been part of this process.

I'm also satisfied that if everybody stays who needs to comment on the order that some of the legal issues that have been raised during the objection phase of this hearing can be addressed. I note the arguments made by Mr. Bienenstock on behalf of the Walt Disney Company, that I can't do anything that's illegal. And he's right. However, it's not illegal to enter orders that include from time to time language that people dispute or language that may be ambiguous or language that might have been better drafted. I regret to say that I think I do it every day. And most of it's because I enter orders that you draft. So, I don't think it's illegal for me to do something that may lead to an argument in the future as to what the language of the order means.

As far as Mr. Rosner's arguments are concerned and

those of others who have talked about the sweeping of cash out of the European operations on the Friday before the filing here, I'll repeat what I referred to earlier. There's no evidence with respect to that although there's been a lot of discussion about it. I'm satisfied that given the fact that Barclays is not taking cash and the only thing that came in to the debtor from Europe was cash that in practical terms we should be safe. The cure objections will be dealt with in accordance with the understandings and representations made by Mr. Miller on behalf of the debtors. And I presume that unless that's worked out consensually that at some point I'll have an opportunity to hear evidence with regard to proper cures.

I believe I dealt with the matters that are before me and that the remainder of the evening should be spent with those lawyers who need to address the substance of the order to work together to develop that in a form that's either purely consensual, or to the extent it's not, can be entered by me provided that the areas of disagreement are highlighted. I will remain available for as long as it's necessary so that to the extent there is a need to put anything on the record or to confer with me that you'll be able to do so. I would note, however, just in the interest of avoiding an all-nighter that to the extent it would be feasible for the order to be completed given the fact that it is mostly done within the next, say, forty-five minutes, that would be desirable.

Would you like to be heard, sir?

MR. KOBAK: Yes. James Kobak, Hughes, Hubbard & Reed for the SIPC trustee. There's also an order in the SIPC case which -- a proposed order which we presented to Your Honor which, essentially -- in fact, what it does is adopts and incorporates by reference the order approving the sale in the Chapter 11 case and to our proceeding.

THE COURT: Whatever that order might end up saying, I take it. So that in effect --

MR. KOBAK: Yes, that's correct. But when that order is entered, if Your Honor would entertain the other order because it is a condition to approval of the contract.

THE COURT: I certainly will.

MR. KOBAK: I have a copy with me.

THE COURT: Do you have a copy of that order?

MR. KOBAK: Yes. If I may?

THE COURT: You may. Does it also have an electronic disk that goes with it?

MR. KOBAK: Yes, it does.

THE COURT: Okay.

MR. KOBAK: Thank you, Your Honor.

THE COURT: Thank you.

MR. BIENENSTOCK: Your Honor, may I be heard?

THE COURT: Mr. Bienenstock?

MR. BIENENSTOCK: Yeah. I'm trying to take Your

Honor's cue. I think Your Honor came up with a solution to the issue I had raised in terms of ambiguous language which might obviate any change in that regard depending on whether Your Honor feels inclined to comment on the following question. Is it fair for us to infer from Your Honor's remarks that if we leave the language alone and one day we'll come back to Your Honor, if necessary, to resolve its ambiguity that Your Honor would be inclined based on your first comments that you'll interpret it based on what was legal?

THE COURT: I'm obligated as a matter of my oath to interpret everything in a manner that I consider legal. Occasionally, however, I'm told I've made mistakes.

MR. BIENENSTOCK: Well, we all do. But I asked the question for this reason. There is bankruptcy jurisprudence that if a bankruptcy judge, like, discharges a third party claim and you don't object, you're stuck with it even though it was illegal. And I just want to be clear here that if we leave the language alone, make the evening shorter, but come back to Your Honor, Your Honor's intent is to interpret it as to what would have been legal.

THE COURT: I'm disinclined to ever state from the bench, even when there are only a couple of people in the room, what my intent is. I'm prepared to say, however, that in the event that parties were to return to this court at some time in the future to seek an interpretation of what I meant in one of

my orders that I will look at the language probably with a clearer head than I have right now and attempt to reasonably parse the words and, in doing so, make a judgment as to not only what the language means but how it should be applied as a legal matter.

MR. BIENENSTOCK: Thank you, Your Honor.

MR. LEMAY: Your Honor, very brief?

THE COURT: Mr. LeMay? This is sort of remarkable because I thought that I had ruled and that I was going to leave and that everybody was going to do some work. But here you go.

MR. LEMAY: Your Honor --

THE COURT: And you were so good about saying that you're going to be brief when you spoke earlier.

MR. LEMAY: And I'll be even briefer now, Your Honor. David LeMay from Chadbourne & Parke. I had raised in my argument the concept of an escrow of the purchase price. Mr. Miller, I think, basically took issue with that. I didn't hear Your Honor's ruling encompass that issue and I simply ask that Your Honor --

THE COURT: It does not encompass that issue. You've confirmed that I did not address that issue at all. So it would have been probably even better had you said nothing.

MR. LEMAY: Thank you, Your Honor.

THE COURT: We're adjourned as far as this hearing is

concerned.

ALL: Thank you, Your Honor.

(Applause)

(Whereupon these proceedings were concluded at 12:41 a.m.)

I N D E X

T E S T I M O N Y

EXHIBITS

I N D E X, cont'd

R U L I N G S

C E R T I F I C A T I O N

I, Lisa Bar-Leib, certify that the foregoing transcript is a true and accurate record of the proceedings.

Lisa Bar-Leib

Digitally signed by Lisa Bar-Leib
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Date: September 22, 2008